

1 separate set of questions for the professor.

2 SEN. CARONA: Okay. Sen. Ellis, for  
3 what purpose do you wish to be recognized?

4 SEN. ELLIS: On this point to just ask a  
5 couple of questions.

6 SEN. CARONA: Certainly.

7 SEN. ELLIS: Dr. Chandler, thank you for  
8 being here at this late hour. I know you've been here  
9 all day. I think you mentioned the year the poll tax  
10 was enacted in Texas. I think you said it was 1901.

11 MR. CHANDLER: Yes, sir.

12 SEN. ELLIS: And then it was abolished  
13 by the courts in 1966, so from about --

14 MR. CHANDLER: It was the 24th  
15 Amendment.

16 SEN. ELLIS: Yeah. So I guess the 24th  
17 Amendment abolished it, but I think it took us a  
18 little longer to --

19 MR. CHANDLER: It was actually the  
20 result -- I mean, once that had been abolished, there  
21 was a court case that was heard --

22 SEN. ELLIS: Yeah.

23 MR. CHANDLER: -- in Texas I think right  
24 after the Voting Rights Act was passed, yeah.

25 SEN. ELLIS: So I assume the Attorney

1 General in Texas at the time or the Members of this  
2 body didn't see fit to come in and abolish it right  
3 away?

4 MR. CHANDLER: That's correct.

5 SEN. ELLIS: It was a long and tortious  
6 road to get there. So about 62 years we had a poll  
7 tax in Texas.

8 Now, I assume you're guessing, but I  
9 just want your opinion on, do you think anybody on  
10 this floor has pulled up the legislation and read the  
11 poll tax bill in Texas? Just a guess.

12 MR. CHANDLER: I doubt it. I don't  
13 know.

14 SEN. ELLIS: Okay. Just as someone was  
15 asking you whether or not you read every word in this  
16 bill, I happen to agree with you, this bill is nothing  
17 more than a modern day poll tax. And if it hurts  
18 somebody's feelings because it's referred to as that,  
19 well, let their feelings fall where they may.

20 You're a student of history, a great and  
21 respected student of government and history. I assume  
22 when Members sat in these chairs on this floor at  
23 these desks in 1901, 1902 or maybe 1899 in a session,  
24 maybe a special session -- I don't know if they had to  
25 suspend the rules to do it by 16 votes or if they

1 could get their 21 or 31 pretty darn easily. Do you  
2 have any sense -- could you give us some sense of what  
3 you think the discussion was like, or do you think  
4 anybody got up in one of these -- behind one of these  
5 desks and said "Maybe if we have a poll tax it will  
6 have a disproportionate impact on certain groups of  
7 people"?

8 MR. CHANDLER: I think that was  
9 certainly well understood whether it was said on the  
10 floor or not.

11 SEN. ELLIS: If you were guessing, what  
12 kind of people probably would not have had a sex  
13 change or have two forms of government -- two letters  
14 that they can bring in, maybe they wouldn't have a  
15 light bill or maybe they wouldn't have a library card  
16 because they're not reading books, would you assume  
17 that most of those people are probably low income?

18 MR. CHANDLER: Yes, sir.

19 SEN. ELLIS: Most of them are probably  
20 African-American or Hispanic?

21 MR. CHANDLER: Yes, sir.

22 SEN. ELLIS: Would you assume that most  
23 of them would probably vote in the Democratic Party  
24 for whatever reason?

25 MR. CHANDLER: Now, we're talking about

1 1901?

2 SEN. ELLIS: No, no, we're talking about  
3 this bill.

4 MR. CHANDLER: Oh, now, yes. I'm sorry.

5 SEN. ELLIS: I'm sorry. Yes, under this  
6 bill.

7 MR. CHANDLER: Yes.

8 SEN. ELLIS: Yeah, I know my colleague  
9 went through a long litany of things. And as I  
10 listened to him, I was thinking maybe some of our  
11 colleagues on this floor don't run into people who  
12 fall into those categories because they don't get  
13 invited to dinner parties, or maybe they don't show up  
14 at the legislature. Maybe they don't have the ID to  
15 get a Southwest Airlines flight to get here. Maybe  
16 they don't like getting searched or going into the  
17 back room. Maybe they don't have the money to get a  
18 ticket on Southwest Airlines.

19 So my question was, do you think most of  
20 those people who would fall under that laundry list of  
21 people who wouldn't have those forms of identification  
22 would probably be African-American or Hispanic?

23 MR. CHANDLER: Yes, sir.

24 SEN. ELLIS: So there is a corollary  
25 between the people who would not meet the requirements



1     laid out in this bill and the people who would not  
2     comply with the requirement to pay a dollar or dollar  
3     and a half to pay a poll tax?

4                     MR. CHANDLER: Yes, sir.

5                     SEN. ELLIS: Okay. I think it's a  
6     perfect analogy, and I appreciate you being here.

7                     MR. CHANDLER: Thank you.

8                     SEN. CARONA: Senator Shapleigh, do you  
9     wish to be recognized?

10                    SEN. SHAPLEIGH: I do, Mr. Chair.

11                    SEN. CARONA: You're recognized.

12                    SEN. SHAPLEIGH: Dr. Davidson, you were  
13     questioned about representations by the Attorney  
14     General, and I think you accurately had actually read  
15     his press release. Do you recall that he sent out a  
16     press release in connection with his investigation  
17     launch that he intended to do in March of 2006?

18                    MR. CHANDLER: Yes, sir. In fact I went  
19     back and just tread it a couple of days ago. It's on  
20     his Website.

21                    SEN. SHAPLEIGH: And do you recall him  
22     in that press release saying "In Texas an epidemic of  
23     voter fraud is harming the electoral process"?

24                    MR. CHANDLER: Yes, sir.

25                    SEN. SHAPLEIGH: And it's in his own

1 press release where he announces he's going to  
2 dedicate a \$1.5 million grant from the Governor's  
3 Office. That's where that number came from. Correct?

4 MR. CHANDLER: That's correct. Not out  
5 of the newspaper, but from him.

6 SEN. SHAPLEIGH: Mr. Chair, if I may,  
7 I'd like to make this a part of the record as  
8 Exhibit 30, which is the Attorney General's press  
9 release titled Helping Stamp Out Voter Fraud in Texas  
10 from March of 2006.

11 (Exhibit No. 30 marked and admitted)

12 SEN. CARONA: Senator Shapleigh, if  
13 you'd bring it forward, please? Have you concluded  
14 your remarks?

15 SEN. SHAPLEIGH: Yes, sir.

16 SEN. CARONA: The Chair recognizes  
17 Sen. Van de Putte.

18 SEN. VAN de PUTTE: Thank you,  
19 Mr. Chairman.

20 Professor, thank you for being here. I  
21 know that it has been a long day and now I guess  
22 beginning a couple hours into the second day. You are  
23 probably one of the best national scholars on historic  
24 suppression and disenfranchisement of certain classes  
25 of voters. Is that correct?

1 MR. CHANDLER: Yes, ma'am.

2 SEN. VAN de PUTTE: And because of that  
3 you are now -- you are considered Professor Emeritus  
4 at Rice, one of our prestigious universities here in  
5 Texas and one that is nationally and internationally  
6 renowned. And is that right, you are --

7 MR. CHANDLER: Yes, ma'am.

8 SEN. VAN de PUTTE: -- Emeritus? With  
9 the work that you have done, much of what had been  
10 documented in other states was a poll tax. I would  
11 like for you to comment on literacy tests and how they  
12 were used. And I think one reason why that is so  
13 important is because for the first time the State of  
14 Texas was called into that Section 5 on Hispanics and  
15 language barriers because not just of the poll tax,  
16 but because of the literacy test.

17 And I'm going to explain what happened  
18 to my own very mother, and if you could elaborate in  
19 your research if this was something that occurred  
20 rarely or something that occurred pretty often. My  
21 mother in 1952 was going to cast her first vote in a  
22 presidential ballot. My mother, a college sophomore  
23 at the time, went to the polls with her poll tax to  
24 cast that ballot.

25 Now, in San Antonio, what they used to

1 do with people who had Spanish names is they put them  
2 in a room until enough people got there, and then  
3 somebody would go administer a reading test. And for  
4 my mother she was one of about ten or twelve she said,  
5 and she waited and then she got administered a reading  
6 test. Now, she was in a group of she said ten or  
7 twelve, she didn't remember, and being a college  
8 sophomore she thought she probably had a pretty good  
9 chance of passing that reading test. But because she  
10 had the audacity to be in a group with someone who  
11 supposedly failed, none of those people were allowed  
12 to vote, none of them. That's how they  
13 disenfranchised my mother and people with Spanish  
14 surnames.

15 And so when I took my mom to the  
16 Democratic National Convention in August of last year,  
17 she cried every day because she was at a convention,  
18 and the first time she tried to cast a ballot she was  
19 discriminated against because her maiden name was  
20 Aguilar, and her name was Maria Isabella Aguilar.

21 Knowing now what you know about my  
22 family, and some of my colleagues just can't seem to  
23 understand why we just can't get over it, that  
24 happened a long time ago, and they keep questioning  
25 "Why do we have to go to the Justice Department? Why

1 do we have to do this?" Well, that's what happened to  
2 my family, and yet we know there are records not only  
3 of poll tax, but we have pretty good accounts of what  
4 occurred in South Texas communities as well.

5           Given the fact that that's just personal  
6 family history and that you have studied this, how  
7 prevalent was that discrimination and those tools, not  
8 just the poll tax, but reading tests and literacy  
9 tests and not just owning property, but how was that  
10 used and how is that different from just one more  
11 barrier, one more hoop to jump for someone to cast a  
12 ballot as proposed in this bill today?

13           MR. CHANDLER: Well, it's certainly true  
14 that Latinos in Texas have been severely discriminated  
15 against. The White Primary, the Democratic Party, in  
16 most places allowed Latinos as distinct from blacks  
17 from voting, but they were local White Primaries along  
18 the border that were set up by individual counties.  
19 And so they suffered much of the same discrimination  
20 in that regard that blacks did.

21           The State of Texas officially did not  
22 have a literacy test like some of the other southern  
23 states did, but at the same time there is much  
24 anecdotal evidence of the kind that you have just  
25 described about Hispanics being treated differently

1 and being required essentially to pass an informal  
2 literacy test.

3 And continuing up into the current time,  
4 there are efforts that have been documented to put the  
5 fear of God into Latinos going to vote, such things as  
6 people standing outside the polling place and taking a  
7 video -- videos of them and of their license plates.  
8 There have been incidents of people dressing up in  
9 official looking outfits, police-appearing uniforms  
10 and informing Latinos who come up to the polls that  
11 they better look out. If they are not legal, they may  
12 be in big trouble. And some of my historian  
13 colleagues and I at Rice a few year ago uncovered a  
14 number of those instances in Texas and throughout the  
15 southwest with regard to Latinos.

16 So this is not -- what your mother  
17 experienced, well, it is not ancient history that  
18 Latinos are still being discriminated against at  
19 polling places in the southwest, including the State  
20 of Texas.

21 SEN. VAN de PUTTE: Professor, I know  
22 that you've done a lot of work in this, and certainly  
23 the books that you've used and much of the case law  
24 and much of the folks that studied this have said that  
25 you are pretty much the expert on this. And although

1 reading our bill I'm still a little bit confused  
2 because as I read it, everybody is going to have to  
3 have at least that voting -- the certificate that's  
4 issued by the elections administrator of that  
5 jurisdiction and a photo identification. But I worry  
6 that if you don't have that with you and with no money  
7 put in to the fiscal note to do any education,  
8 training of poll workers, when in your work, in your  
9 research, is there any effect when those officials who  
10 are supposed to be administering the election, the  
11 election clerks and judges, is there any evidence to  
12 show us when there is not sufficient training of  
13 those?

14 And particularly with the litany of  
15 documents that could be possibly used, is that --  
16 should that give us pause with no training about how  
17 this is going to be enacted and what's going to happen  
18 basically at the grassroots level? Does this have the  
19 potential to cause further disenfranchisement of  
20 Hispanics, blacks and those people in poverty, given  
21 the fact that we have zero dollars in that fiscal note  
22 for the training?

23 MR. CHANDLER: That would certainly be  
24 my supposition, Senator.

25 SEN. VAN de PUTTE: Thank you,

1 Professor. I appreciate you being here till two in  
2 the morning.

3 MR. CHANDLER: Thank you.

4 SEN. CARONA: Members, is there anyone  
5 else with a question for the professor?

6 SEN. LUCIO: Mr. President?

7 SEN. CORONA: It appears not.

8 SEN. LUCIO: Mr. President?

9 SEN. CORONA: Senator, for what purpose?

10 SEN. LUCIO: Just to ask a question or  
11 two. I might not have another chance to do this with  
12 this professor. I'd like to ask a question.

13 SEN. CARONA: You're recognized.

14 SEN. LUCIO: Thank you, Mr. President.

15 And very briefly, Professor, thank you. I join my  
16 colleagues in welcoming you here and commending you  
17 for all your studies over the years.

18 MR. CHANDLER: Thank you.

19 SEN. LUCIO: Leticia Van de Putte,  
20 Senator Van de Putte, reflected on literacy tests. My  
21 father worked at the Sheriff's Office for 30 years in  
22 Cameron under about four different Sheriffs and, of  
23 course, he took me to a lot of political parties in  
24 the old days when I was just a kid, and I heard many  
25 stores obviously along the way.



1                   And I want to ask you, in your  
2 studies -- you also included some of these studies,  
3 and one was when the poll tax was in effect, I'm told  
4 that the politicians, those obviously in power, would  
5 buy all the poll taxes that people needed as long as  
6 obviously they had control over those votes.

7                   MR. CHANDLER: Yes, there were machines  
8 along -- along the border, yes.

9                   SEN. LUCIO: Exactly. Now, that being  
10 the case and putting it -- comparing that to today's  
11 standards in terms of illegal activities during the  
12 election -- during the elections that took place then,  
13 buying or purchasing the poll tax for somebody and  
14 then driving them to the polls and then making sure  
15 they voted a certain way, what kind of -- what kind  
16 of -- let's say the Attorney General -- what kind of  
17 prosecution would those individuals be -- you know, be  
18 in effect -- be affected by under the laws of today?  
19 How could they be prosecuted? I mean, in today's --  
20 with today's laws, how would those people back then be  
21 prosecuted? Could they be prosecuted?

22                  MR. CHANDLER: You mean the bosses who  
23 would buy poll taxes?

24                  SEN. LUCIO: What would they be subject  
25 to in terms of today's laws and being prosecuted for

1 those kinds of political activities? Is what I'm  
2 trying --

3 MR. CHANDLER: Well, they -- I mean, it  
4 would certainly be illegal, and they would be -- if  
5 the law were carried out like it was supposed to be,  
6 they would certainly be prosecuted if their behavior  
7 came to light.

8 SEN. LUCIO: And the point I wanted to  
9 make is simply this: That that, in fact, took place.

10 MR. CHANDLER: Yes.

11 SEN. LUCIO: And that was part of the  
12 suppression. That was part of what Hispanics or  
13 Latinos or Mexican-American citizens on the north side  
14 of the border, Texas-Mexico border went through, and  
15 maybe some of the Members here on this floor are  
16 not -- are not aware of, and I wanted to share that  
17 because that was just rampant. That was just part of  
18 any politics at the time in the 19 what, '40s, '50s?

19 MR. CHANDLER: Into the '50s certainly.  
20 The old machines were the Patronos, and it was almost  
21 a feudal relation. And the Latinos were looked upon  
22 as inferior, as foreign in some sense, as people to be  
23 manipulated and used for the purposes of the -- of the  
24 Patronos, and that's -- that is undeniable Texas  
25 history.

1                   SEN. LUCIO: I lived those days as a  
2 young boy. I remember them, and I think that's what  
3 Sen. Van de Putte was pointing out as to bad memories  
4 of past. Thank you.

5                   MR. CHANDLER: Yes. Thank you.

6                   SEN. DUNCAN: There are no more -- no  
7 more questions in the queue. So you are free to -- or  
8 excused. Thank you for your testimony.

9                   MR. CHANDLER: Thank you, sir.

10                   **TESTIMONY BY ED JOHNSON**

11                   SEN. DUNCAN: The Chair calls  
12 Ed Johnson. Okay. Mr. Johnson, I think you have some  
13 documents you'd like to introduce into the record.  
14 We'll mark those as Exhibit No. 31, and they'll be in  
15 the record.

16                   (Exhibit No. 31 marked and admitted)

17                   SEN. DUNCAN: Identify -- let me  
18 identify these as it looks like records that are from  
19 specific voting documents. So at some time in your  
20 testimony I assume you'll explain these. Exhibit 27  
21 or -- 32? I'm sorry. Exhibit 32 will be received in  
22 the record.

23                   (Exhibit No. 32 and 33 marked and  
24 admitted)

25                   SEN. DUNCAN: You have ten minutes.

1 State your name and who you represent.

2 MR. JOHNSON: Okay. Good morning. My  
3 name is Ed Johnson. I'm with the Harris County Tax  
4 Office, and in Harris County the Tax Office does voter  
5 registration. I have worked for the voter  
6 registration department for eight years now at the  
7 Harris County Tax Office. I was asked to come and  
8 present to you-all today some cases of voter rarity or  
9 voter registration fraud that we have presented to the  
10 House in previous testimony. We have a sampling of it  
11 to show you here today. I was asked by the new Tax  
12 Assessor/Collector of Harris County, Leo Vasquez, who  
13 was just appointed this last December the 23rd. So  
14 he's only been in a couple of months, and he asked me  
15 to give the, I guess, testimony today.

16 One of the things that Leo is real proud  
17 of and really works on hard on our voter registration  
18 staff is -- his goal for us is to have every citizen  
19 that is eligible to vote registered. That is his  
20 goal, and we are making all kinds of strides to make  
21 that possible in voter registration. On the same  
22 note, he also doesn't want any of these real, valid  
23 voter registrations to be disenfranchised by someone  
24 taking their vote. So the integrity of the voter roll  
25 is also very important to us.

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1           The first case that I was going to lay  
2 out is a case of voter fraud. It was committed by a  
3 volunteer deputy, Janice Shelvin. Janice Shelvin was  
4 a college student that became a volunteer deputy in  
5 one of her college classes. And according to her  
6 testimony, her professor asked her to do a voter  
7 registration drive as part of her, I guess, class for  
8 credit or some course. Ms. Shelvin unfortunately  
9 procrastinated in her testimony and waited to the last  
10 day and realized that she had to turn in quite a few  
11 applications.

12           She then stated that she pulled out her  
13 phone book and started filling in voter registration  
14 cards. After 25 names she ran out of names in her  
15 phone book and then proceeded on with the other 36,  
16 making up names and filling them in. She turned this  
17 in. I think several of her classmates were all  
18 gathered into one bundle and were delivered to the  
19 Harris County Tax Office to be registered.

20           It was the, I guess, observance or  
21 diligence of one of our very good clerks as they were  
22 processing these applications actually started to note  
23 that these applications all had very similar  
24 handwriting and were all used by the same pen. So  
25 there was a red flag waived in her head that there's

1 something amiss here and brought it to the attention  
2 of her supervisor, where we then challenged these  
3 applications because they did appear to be all signed  
4 by the same person and written all in the same  
5 penmanship. So there were 61 cases.

6 We, under the I guess Texas Election  
7 Code, sent these voters a letter challenging these  
8 applications thinking they were fraudulent. We got 25  
9 replies from voters, and then the other 36 were -- no  
10 reply was found. In fact, the post office were sent  
11 certified mail as part of the documentation that  
12 you-all received, and the post office said that there  
13 was no residence there to deliver it to. So they were  
14 returned. So I think that those were the fraudulent  
15 ones.

16 This was sent to the Harris County  
17 District Court, and Ms. Shelvin, I guess, pleaded  
18 guilty to this offense and was convicted for 61 cases  
19 of voter fraud. If -- and this was back in the year  
20 2000. At that point in time as in the election code,  
21 voter registration cards are accepted on face value.  
22 When the voter signs the bottom, or the alleged voter,  
23 when the alleged voter signs the cards, they are  
24 accepted on face value until they are challenged. So  
25 that's what happened to these.

1                   And if they were not caught by our clerk  
2 that had the real judgment here, these people would  
3 have become registered voters. We would have sent  
4 them voter registration cards with the possibility of  
5 someone collecting those cards and possibly voting  
6 them in an early voting scenario or something like  
7 that.

8                   The second case I would like to present  
9 is -- we refer to it as the Dashwood case. This  
10 happened in 2006. We received 121 voter registration  
11 applications. The resident address that they -- these  
12 vultures were trying to use was a street called  
13 Dashwood. There is a street in Houston called  
14 Dashwood, but the address range that they were writing  
15 on the voter registration card was nonexistent. There  
16 isn't that address block on Dashwood.

17                  And in our office, the procedures are  
18 when our processors can't find it in the database, the  
19 street database, a street range, they send it to our  
20 mapping department who has all the plots and the plats  
21 and all the new maps and everything, and they start  
22 researching to find it. They found out that this  
23 address of Dashwood is nonexistent and then really  
24 quickly realized "Oh, boy, I have a whole bunch of  
25 applications here all in this block range of

1 Dashwood." And so we started looking at them and  
2 found that, once again, they were similar penmanship,  
3 the wide variations of the name, they switched the  
4 first name, last name, they would turn the dates of  
5 the birth date around. They had them all just jumbled  
6 up trying to register a whole bunch of different  
7 people that were fraudulent at this address on  
8 Dashwood.

9 Thank goodness they didn't know Houston  
10 that well to know that that was a nonexistent address,  
11 or we never would have caught these for that. But the  
12 only other characteristic they had was all these  
13 applications were actually mailed from El Paso to us.  
14 So whoever was doing it was mailing them from El Paso  
15 here. And those were turned over to our D.A., and  
16 they are still under investigation. I think they took  
17 it to the D.A. in El Paso where they did have some  
18 people that were questioned. I don't know what the  
19 final outcome of that one was.

20 Then the last case I'd like to present  
21 is we have 24 examples here of deceased -- people that  
22 are deceased, and they voted after their date of  
23 death. These are 24 examples that, once again, we had  
24 a diligent clerk as we were going through and cleaning  
25 up our voter roll, taking the social security death



1 list and matching it to voters to send notices, that  
2 she started to realize that some of these people had  
3 voting history after their date of death on the social  
4 security list. And some of these 24 people voted  
5 numerous times here.

6 I can tell you that these were  
7 registered voters in Harris County, and they are now  
8 deceased, and they do have a voting history. Our  
9 County Clerk keeps our voting history records, and the  
10 County Clerk has voting history for these people in  
11 elections that were past their date of death.

12 In this documentation, you will see that  
13 we have a complete voter file for each one of these  
14 voters. It's their voter registration application,  
15 how they get registered, if they had any changes of  
16 address. It will have a front cover page that has the  
17 computer screen shot of that voter's record in our  
18 office, and then also on the bottom corner it will  
19 show what elections they voted in and the date of  
20 those elections. And then on the last page is a  
21 notice from the social security department of their  
22 date of death, and you can go through these, and  
23 you-all can get the documents and look at them.

24 Several of these voters voted early in  
25 person during early election. We had a couple of them

1 on election day and a couple by ballot by mail. The  
2 majority of them were done early in person in early  
3 voting.

4 And I know it's getting late, and so  
5 I'll stop with this fine set of documents.

6 **QUESTIONS FROM SENATE FLOOR**

7 SEN. DUNCAN: The Chair recognizes  
8 Sen. Huffman.

9 SEN. HUFFMAN: Mr. Johnson, thanks for  
10 staying with us so late.

11 MR. JOHNSON: You bet.

12 SEN. HUFFMAN: I appreciate it. I want  
13 you to go over again that last group that you were  
14 talking about to make sure that it's clear. I'm not  
15 sure that it was. As I understood your testimony,  
16 you've established that, in fact, that last group  
17 of 24, at least some of those people, or someone,  
18 actually cast a ballot in Harris County after it was  
19 determined that they were dead. Is that correct?

20 MR. JOHNSON: That is correct.

21 SEN. HUFFMAN: Okay. And what are the  
22 numbers? How many of those were you able to  
23 establish?

24 MR. JOHNSON: Well, we have proof here  
25 that 24 -- and this is just a random, you know,

1 sampling that we found -- 24 of these people are  
2 deceased, were registered voters in Harris County they  
3 are deceased now, and they had voting history after  
4 their date of death on the social security list.

5 SEN. HUFFMAN: And how was it that you  
6 came to investigate that particular group of people?

7 MR. JOHNSON: This is something that we  
8 routinely do. Almost on a daily basis now in our  
9 office we get probate court records and go through  
10 them to find if any of those people were registered  
11 voters to remove them from the voter roll. Right now  
12 what we're working on is we get notes in poll books,  
13 family members will write notes in poll books, you  
14 know, this was my husband or wife and is deceased, and  
15 we go through these, we mail these people letters  
16 asking them to confirm this information.

17 And this particular project we actually  
18 purchased a copy of the social security death database  
19 and started comparing our voter roll to it to see if  
20 we had any matches to clean our voter roll up.

21 SEN. HUFFMAN: Is that a procedure  
22 that's required by the Secretary of State, or is that  
23 something that Harris County has taken on?

24 MR. JOHNSON: That's something that  
25 Harris County took on as an attempt to, like I said,

1 make a clean and accurate voter roll. It actually  
2 cost our department quite a bit of money to make that  
3 purchase and to do that work.

4 SEN. HUFFMAN: And is that a cost that  
5 Harris County has taken on itself?

6 MR. JOHNSON: Yes.

7 SEN. HUFFMAN: Do you have knowledge as  
8 to whether or not there are other counties in the  
9 state that are taking this additional obligation on?

10 MR. JOHNSON: Yes, in fact -- yes, there  
11 are other counties that take this on. In fact this  
12 particular run here, we did this in partnership with  
13 Tarrant County at the time.

14 SEN. HUFFMAN: Okay. Do you know  
15 whether or not all the other counties in the State of  
16 Texas are participating in this?

17 MR. JOHNSON: No, I do not know if all  
18 the other counties in the State of Texas are.

19 SEN. HUFFMAN: Okay. Do you believe  
20 that there could be some counties that are not purging  
21 their rolls of deceased individuals?

22 MR. JOHNSON: I would believe that  
23 that's very possible.

24 SEN. HUFFMAN: Okay. I want to go  
25 through something with you because I think you've

1 established through some of the cases that you've  
2 brought to us and the investigations that have been  
3 done that there are, in fact, people being registered  
4 in Harris County who -- in some fraudulent manner.  
5 But let's take an example, and I'm going to ask you  
6 about a situation where an individual would fill out  
7 the -- a Texas Voter Registration Application. This  
8 is just a form that is provided by the Secretary of  
9 State. Is that correct?

10 MR. JOHNSON: Yes.

11 SEN. HUFFMAN: And do you have one of  
12 those forms in front of you?

13 MR. JOHNSON: I have several copies.  
14 Would you like for --

15 SEN. HUFFMAN: Okay. All right. If you  
16 could just make those available? And if anyone who  
17 would like to look at this, we'll provide you a copy.  
18 And these are the original ones. Actually you brought  
19 a stack from Harris County. Is that correct?

20 SEN. DUNCAN: Senator, do you want to  
21 put these in the record?

22 MR. JOHNSON: These were actually  
23 produced by the Secretary of State's Office.

24 SEN. HUFFMAN: Yes? Yes, sir? Yes,  
25 Mr. Chair?

1                   SEN. DUNCAN: Do you want to put that in  
2 the record?

3                   SEN. HUFFMAN: Yes, could we put this in  
4 the record and mark it as an exhibit? I don't know  
5 what number we're on.

6                   SEN. DUNCAN: It will be Exhibit No. 34,  
7 and describe it, if you would.

8                   (Exhibit No. 34 marked)

9                   SEN. HUFFMAN: Yes, it is a Texas Voter  
10 Registration Application. This is one that is  
11 particularly from Harris County, but it's -- I believe  
12 it would be produced by the Secretary of State. Is  
13 that -- is that correct, Mr. Johnson?

14                  MR. JOHNSON: Yeah, these are produced  
15 by the Secretary of State, and they can be used in any  
16 county across the State of Texas.

17                  SEN. HUFFMAN: All right.

18                  SEN. DUNCAN: It will be -- it will be  
19 received in the record.

20                  (Exhibit No 34 admitted)

21                  SEN. HUFFMAN: All right. Thank you,  
22 sir.

23                         Just to see how this process would work,  
24 let's just pretend that -- let's pretend that I'm  
25 Elvis Presley. Okay? And let's say I fill out this

1 Texas Voter Registration Application and I mark -- and  
2 there's a place at the bottom that provides space to  
3 present a Texas driver's license number and a social  
4 security number. Is that correct?

5 MR. JOHNSON: Yeah, that's Step No. 9.  
6 Let me have my glasses -- let me put my glasses on.

7 SEN. HUFFMAN: All right.

8 MR. JOHNSON: Or 8 -- that's 8.

9 SEN. HUFFMAN: That's No. 8.

10 MR. JOHNSON: Sorry.

11 SEN. HUFFMAN: And at the bottom of  
12 No. 8 is an option "Check if you do not have a Texas  
13 driver's license or Texas personal identification  
14 number," and then next to it is "Check if you do not  
15 have a social security number." So let's say I do not  
16 have either one of those, either one, do not have a  
17 TDL or an ID card, nor do I have a social security  
18 number. So I check both, I sign it and I mail it off.  
19 Where does it go? Does it go to your office?

20 MR. JOHNSON: Yes.

21 SEN. HUFFMAN: And then what would  
22 happen when it arrived at your office with that  
23 information from me asking to register to vote?

24 MR. JOHNSON: The first thing when one  
25 of these applications comes into our office, we check

1 it for what the date is on it because if you mailed  
2 it, it becomes effective 30 days from the date it was  
3 postmarked or the date we receive it from a volunteer  
4 deputy or some other government agent. We check it  
5 for completeness, make sure all the boxes are filled  
6 in. If the application is not complete, we'll mail  
7 them a letter of incomplete and ask -- with another  
8 application in it and ask them to try again and make  
9 sure they fill all the required boxes out.

10 In the scenario you were talking about,  
11 if you checked the box that said "I do not have a  
12 Texas driver's license" and you checked the box that  
13 said "I do not have a social security number," under  
14 the Help America Vote Act, the Secretary of State is  
15 supposed to provide a unique ID number for this voter,  
16 and they do. They provide a state voter ID number,  
17 and this person becomes registered.

18 SEN. HUFFMAN: Okay. So that is  
19 happening, and that is the law in the State of Texas  
20 at this point. Is that correct?

21 MR. JOHNSON: Correct.

22 SEN. HUFFMAN: Okay. Once they provide  
23 that unique ID number, then what would happen?

24 MR. JOHNSON: Well, then we mail them a  
25 voter certificate card.



1                   SEN. HUFFMAN: Okay. What form of  
2 identification would they then need to vote with that  
3 voter registration card?

4                   MR. JOHNSON: In this particular  
5 example, you are marked on the poll book. When we  
6 print the poll book or the list of registered voters  
7 for an election, you would be marked as not being ID  
8 compliant because you haven't shown ID to who you are.  
9 And in the state law, what it states there is that you  
10 can use any one of the currently prescribed IDs with  
11 the exception of the voter registration card. I have  
12 the list here. You know, you can use your driver's  
13 license. Most people do something like that. You can  
14 use, you know, birth certificate, citizenship papers,  
15 you know, a passport. The one that I find real  
16 interesting is you can use a letter, an official  
17 letter mailed from a government entity. So if I had  
18 mailed them a letter saying that they hadn't had a  
19 complete application to try again, that is a letter  
20 from a government entity, and they could use it  
21 for proof.

22                   SEN. HUFFMAN: So if I had no other form  
23 of ID, I could use the letter that you had sent to me  
24 as meeting the requirements under 63.0101 described as  
25 official mail addressed to the person by name from a

1 governmental entity. Is that correct?

2 MR. JOHNSON: That is correct. That is  
3 an acceptable form of ID.

4 SEN. HUFFMAN: Okay. So a person who  
5 wanted to commit fraud could, in fact, send in  
6 applications -- is that correct -- using false names  
7 as long as they had an address where they could  
8 receive mail, go through this dance with the Secretary  
9 of State and the tax assessors and get voter  
10 registration cards along with letters from your  
11 office, and they could use those things to get  
12 individuals to go in to the poll to vote, and it would  
13 be virtually impossible under the current state of the  
14 law for them to be detected. Is that correct?

15 MR. JOHNSON: Correct. The election  
16 judge could not deny them the right to vote. They are  
17 on the poll book. They are listed as a registered  
18 voter. They have shown one of the acceptable forms of  
19 ID, and they would be allowed to vote on election day.

20 SEN. HUFFMAN: Okay. So that's just one  
21 way that voter fraud can be committed in the State of  
22 Texas under the current law, and no one would know  
23 actually that it was going on probably other than the  
24 individuals involved with the committing the offense.  
25 Is that correct?

1 MR. JOHNSON: That is correct.

2 SEN. HUFFMAN: All right. One of the  
3 other records that you provided to us was the young  
4 woman, I believe, who was registering people for a  
5 school project. I think you indicated that she as  
6 well managed to successfully register some individuals  
7 who you believed were nonexistent individuals. Is  
8 that correct?

9 MR. JOHNSON: No, she was never able to  
10 register anybody.

11 SEN. HUFFMAN: All right.

12 MR. JOHNSON: We caught them before.  
13 Like I said, the clerk that was working these  
14 applications noticed this pattern before we mailed any  
15 voter registration certificates out, and we were able  
16 to stop them and challenge these voters. But we had  
17 officially accepted the applications and noticed  
18 everything being complete, and they were in the  
19 process of being registered.

20 SEN. HUFFMAN: All right. What is your  
21 experience as you find cases that you believe are  
22 cases of voter fraud and you bring them to the  
23 District Attorney's Office? Has it been your  
24 experience that those cases had been difficult to  
25 prosecute?

1 MR. JOHNSON: Yes, we have turned quite  
2 a few cases over to the District Attorney, and I will  
3 tell you our District Attorney has made attempts to  
4 prosecute this, going back to one of our long-time  
5 District Attorneys Johnny Holmes. And he basically  
6 said that there is not the tools in the election law  
7 to prosecute a voter. Basically in order to get voter  
8 fraud prosecuted, you have to have that person  
9 committing the offense confess to that offense for  
10 prosecution.

11 One of the things they always state was  
12 because -- just a signature on the poll book is not  
13 really enough evidence for them so far to get a  
14 conviction, that if we ever had some other form of ID  
15 that they contend it was a harder match, you could  
16 actually have successful convictions probably on some  
17 of these voter fraud issues.

18 SEN. HUFFMAN: Isn't it true that the  
19 current state of the law does not facilitate proof  
20 that a particular person cast a ballot? Is that -- is  
21 that a fair statement?

22 MR. JOHNSON: Yes.

23 SEN. HUFFMAN: Do you think that the  
24 current Public Integrity Division of the Harris County  
25 District Attorney's Office is meeting the same

1 problems that were met, as you mentioned, back in  
2 Johnny Holmes' days?

3 MR. JOHNSON: Correct.

4 SEN. HUFFMAN: All right.

5 MR. JOHNSON: There was a recent case  
6 that I just saw pending on a Website. We had an open  
7 record request for -- right before this last  
8 November 2008 election from Texas Watchdog. They sent  
9 us a list of over 4,000 voters that they believed to  
10 be deceased. This was information that they found  
11 from the social security death list. We are currently  
12 working that list trying to, you know, find out if  
13 they are deceased or not, and several of them we have  
14 removed from the rolls.

15 Texas Watchdog also gave that same list  
16 to one of our local news stations, Channel 2 in  
17 Houston. Channel 2 did an investigation and actually  
18 found two of the voters on that list as being deceased  
19 and voting during the Primary, and that was after they  
20 had passed away. They actually placed a vote in the  
21 Primary, and they had interviews with the family  
22 members showing the death certificates and everything.  
23 And the family members were really upset about this,  
24 that someone would steal or fraud their deceased  
25 relative's name.

1                    Watchdog actually turned these over to  
2                    the District Attorney's Office, these cases, and they  
3                    were unable to -- the District Attorney had to put a  
4                    comment back they were unable to get any prosecution  
5                    on these cases because they didn't have anyone to  
6                    prosecute nor anyone to confess to the crime.

7                    SEN. HUFFMAN: All right. So each one  
8                    of these cases is actually pretty much a "Who done  
9                    it?" Is that correct?

10                  MR. JOHNSON: That is correct.

11                  SEN. HUFFMAN: And just like any other  
12                  criminal case, the State of Texas has to prove these  
13                  cases beyond a reasonable doubt. Is that correct?

14                  MR. JOHNSON: I believe that is correct.

15                  SEN. HUFFMAN: So they have to prove  
16                  identity, they have to prove intent, they have to  
17                  prove the elements of the offense. And many times  
18                  they're confronted with a situation where they just  
19                  don't have any way to prove it. Is that correct?

20                  MR. JOHNSON: That's what I have been  
21                  told.

22                  SEN. HUFFMAN: All right. Do you think  
23                  that just because -- you know, we've had a lot of talk  
24                  today about the fact that there's just -- there's no  
25                  evidence that there's any kind of voter fraud or voter

1 impersonation going on because if there -- if it was  
2 happening, then there would be all these convicted  
3 cases out there. Do you think that because it is so  
4 difficult to prove these cases and because the law  
5 does not facilitate the proof, that that may be one of  
6 the reasons why there aren't a lot of convictions that  
7 have been shown through the records? Would you agree  
8 with that?

9 MR. JOHNSON: Yes. I will say that the  
10 Texas Election Code does not give us the tools to  
11 really do the job that we're, you know, trying to do,  
12 even the D.A.'s Office. It's very difficult to get  
13 prosecution in these cases.

14 SEN. HUFFMAN: All right. Would it  
15 surprise you to know that this -- well, in the General  
16 Election in November of '04 that the Harris County  
17 District Attorney's Office received 3,324 electric  
18 fraud complaints for that one election, or that for  
19 the Primary Election in March of '08 that they  
20 received 1,502 complaints of election fraud that came  
21 in as -- I would assume slightly -- during the  
22 election and probably for a couple of days thereafter?  
23 Do those numbers surprise you?

24 MR. JOHNSON: No, they do not.

25 SEN. HUFFMAN: As the election is taking

1 place, does your office along with the D.A.'s Office  
2 and Beverly Kaufman's Office monitor the situations  
3 that are going on, try to field phone calls and  
4 receive complaints of election fraud violations?

5 MR. JOHNSON: Well, I can speak for our  
6 office, the tax office. We're actually by election  
7 code obligated to review the poll book and all the  
8 documents from the election after the election has  
9 taken place, to validate that everybody that was  
10 marked as voting were registered voters. If we find  
11 someone that had been written into the poll book and  
12 wasn't a registered voter and allowed to vote, we're,  
13 by the Texas Election Code, supposed to turn those  
14 names over to the District Attorney, and we do that  
15 after every election, and, you know, they do their  
16 best in trying to work this. And I know Beverly  
17 Kaufman's Office, who runs the election, has the same  
18 responsibilities for any voter fraud that goes on.  
19 They compile a report after every election and submit  
20 it to the D.A.'s Office.

21 SEN. HUFFMAN: Just a couple of more  
22 quick questions, Mr. Johnson. Based on your  
23 experience, your years at the Tax Assessor's Office  
24 and working on these issues all these years, do you  
25 believe -- in your opinion, do you believe that there



1 is a voter fraud problem in Harris County?

2 MR. JOHNSON: I will tell you there is  
3 voter fraud in Harris County. We have one of the few  
4 convicted cases of it. We have examples here. I  
5 can't tell you how extensive it is. We have never  
6 done a voter fraud study on our voter roll. The cases  
7 that I presented to you here today were just found due  
8 to workers, clerks in our office being diligent and  
9 accidentally stumbling across these records to  
10 discover them.

11 SEN. HUFFMAN: Does current law actually  
12 make it difficult to assess the scope of the problem?

13 MR. JOHNSON: Yes. The current election  
14 law is very loose and makes it very difficult to --  
15 doesn't give us the tools to do the types of  
16 investigations needed for these projects.

17 SEN. HUFFMAN: All right. Thank you  
18 very much, Mr. Johnson. And thank you, Members, for  
19 bearing with me. Thank you, Mr. Chairman.

20 SEN. DUNCAN: Thank you Senator.  
21 Members, we've been going for over two hours, and we  
22 need to give our court reporter an at ease. So we'll  
23 be at ease for ten minutes. That will be until 2:35.

24 (Recess: 2:25 a.m. to 2:38 a.m.)

25 SEN. DUNCAN: The Committee of the Whole

1 will come back to order. Sen. Gallegos, did you want  
2 to yield to Sen. West?

3 (No response heard)

4 SEN. DUNCAN: Sen. West?

5 SEN. WEST: Thank you, Mr. Chairman.

6 Mr. Johnson --

7 SEN. DUNCAN: If we could have order,  
8 please. Go ahead, sir.

9 SEN. WEST: It's Mr. Johnson. Is that  
10 correct?

11 MR. JOHNSON: Yes.

12 SEN. WEST: Okay. I'm sorry. Your  
13 position there in Harris is --

14 MR. JOHNSON: I'm sorry I didn't say  
15 that earlier. I'm the Associate Director of Voter  
16 Registration in Harris County.

17 SEN. WEST: Okay. Is it true that at  
18 least 13,000 timely voter registration applications  
19 had not been processed when early voting began in  
20 Harris County during the fall of 2008 elections, and  
21 that many of them were not processed before early  
22 voting concluded?

23 MR. JOHNSON: I do not have those  
24 figures, you know, right off the top of my head. I  
25 could find those answers out for you, but I can't --

1                   SEN. WEST: But let me ask it this way:  
2 Was there a substantial number of voter registration  
3 applications not processed during that particular time  
4 period?

5                   MR. JOHNSON: You know, that's -- you  
6 have to define "a substantial number." We received  
7 about 120,000 voter registration applications the  
8 day -- the day of and day after the cutoff. By the  
9 start of early voting, we had probably 95 percent of  
10 those worked. And by the time we got to election day,  
11 all of them were complete.

12                  SEN. WEST: So you did have a backlog  
13 prior to the start of early voting? You only had --  
14 I'm sorry. You had only completed about 95 percent of  
15 the voter registration applications at the time that  
16 early voting started?

17                  MR. JOHNSON: Correct.

18                  SEN. WEST: Okay. Do you know that  
19 Harris County disqualified nearly 70,000 voter  
20 registration applications that were received in time  
21 for the 2008 election? Do you know that?

22                  MR. JOHNSON: No, I do not know that.

23                  SEN. WEST: Were a substantial number of  
24 people disqualified?

25                  MR. JOHNSON: I do not -- you know, you

1 have to define what is "disqualified." What's your  
2 definition of "disqualified"?

3 SEN. WEST: Seventy thousand. You know,  
4 in terms -- were there --

5 MR. JOHNSON: Are you talking about we  
6 received 70,000 applications that were incomplete, or  
7 are you telling me that we didn't --

8 SEN. WEST: You disqualified.

9 MR. JOHNSON: -- register and rejected  
10 70,000 applications? There's a big difference between  
11 the two.

12 SEN. WEST: Did you know that Harris  
13 County disqualified nearly 70,000 voter registration  
14 applications that were received in time for the 2008  
15 election?

16 MR. JOHNSON: I will tell you we had  
17 quite a few applications that were not completed  
18 correctly, and we mailed those people letters, the  
19 letter with a new application, and they had ten days  
20 to reply, and they received the original date of the  
21 first application, which still made them qualify.

22 SEN. WEST: So there's a process?

23 MR. JOHNSON: Yes, there's a process.

24 SEN. WEST: Okay. All right. Now, did  
25 you know that Harris County Election Officials have

1 acknowledged that in many polling locations in Harris  
2 County when voters were in line to vote at  
3 seven o'clock and had the right to cast a ballot, that  
4 they were routinely given provisional ballots rather  
5 than standard ballots?

6 MR. JOHNSON: That unfortunately is not  
7 my department. You would have to ask the County Clerk  
8 about that. The tax office just handles voter  
9 registration.

10 SEN. WEST: Okay. But you have  
11 processes in place in your office to handle different  
12 types of election-related issues?

13 MR. JOHNSON: Yes. On election day for  
14 that scenario you were just talking about, we had over  
15 240 people on the phone, and we actually answered  
16 close to almost 60,000 -- I guess 55,000 phone calls  
17 on election day, helping people find their polling  
18 locations, helping the election judge qualify voters  
19 they were having problems with.

20 SEN. WEST: In terms of -- my colleague  
21 Senator Huffman went methodically through the voter  
22 registration application card, and I assume that you  
23 have processes in place there to verify all the  
24 information necessary to determine whether or not a  
25 person should be issued a voter -- voting registration

1 certificate?

2 MR. JOHNSON: We follow the Texas  
3 Secretary of State -- I mean, the Texas state law on  
4 elections.

5 SEN. WEST: But you do have processes in  
6 place in order to --

7 MR. JOHNSON: Yes. We have manuals that  
8 we have for all of our employees on the processes to,  
9 you know, handle voter registration applications.

10 SEN. WEST: All right. In terms of the  
11 handling of these applications, are individuals given  
12 certain specific duties as it relates to the  
13 applications, or do they just kind of look at the  
14 application, you have individuals looking at  
15 application after application?

16 MR. JOHNSON: With the volume that we  
17 handle, yes, you know, the assembly line method is  
18 proven to be the most efficient for handling high  
19 volumes, you know, in a quick manner. So, yes, we  
20 have different departments that do different tasks in  
21 each one. And the very first step when we receive an  
22 application is it is validated to make sure it is  
23 complete. And then after it's completed, even after  
24 that, they put a document number on it and image it,  
25 and that is cataloged in our voter registration system

1 even on the incomplete ones so we can refer back at  
2 any point in time and find out if a voter submitted a  
3 complete or incomplete. But that is the very first  
4 step when they come through the door of our office.

5 SEN. WEST: Is there a statutory duty  
6 imposed by Texas law to go through and purge the voter  
7 registration rolls of persons that are deceased?

8 MR. JOHNSON: If you're referring to --  
9 and the definition of "purge" in the Texas Election  
10 Code is by the National Voter Registration Act when  
11 you have reached the end of your suspense cycle.

12 SEN. WEST: Explain "suspense."

13 MR. JOHNSON: Okay. I'll start at the  
14 beginning on the definition of "purge" in the election  
15 code.

16 SEN. WEST: Okay.

17 MR. JOHNSON: If every two years we  
18 mail -- and this is where the majority of people end  
19 up on suspense. Every two years we mail every voter,  
20 registered voter, a new voter registration certificate  
21 or renewal certificate, the card that you get in the  
22 mail. If that card -- and it has instructions on that  
23 card. If the postman cannot deliver it, if the  
24 resident no longer lives at that address they're  
25 trying to mail it to, then the post office is

1 instructed to return it to our office as being  
2 undeliverable.

3           When your voter registration card is  
4 returned to our office as being undeliverable, that  
5 you no longer live at that address, we put you on  
6 what's called "suspense." You're still a registered  
7 voter. You can still vote. When you walk into a  
8 polling location, you're on the poll book, you're  
9 going to have an "s" by your name, which stands for  
10 "suspense." And the election judge will ask you,  
11 "Sir, would you please fill out a statement of  
12 residence?" An address correction card is basically  
13 what that is with your new address. Once you fill out  
14 that card or any other voter application, your name is  
15 removed off suspense.

16           By the National Voter Registration Act,  
17 once you go on suspense and you remain on suspense  
18 without updating your address, without filling out a  
19 change of address card or application for two General  
20 Election cycles, you are then removed from the voter  
21 roll.

22           SEN. WEST: Okay. Thank you. As it  
23 relates to checks and balances, do you have checks and  
24 balances in your office?

25           MR. JOHNSON: Yes, we do.



1                   SEN. WEST: Describe those checks and  
2 balances.

3                   MR. JOHNSON: I mean, are you asking me  
4 what the procedure is that I'm checking and balancing?

5                   SEN. WEST: Of the registration cards.

6                   MR. JOHNSON: We probably have the most  
7 robust in the state. And the fact that every document  
8 that comes through our door, the very first thing that  
9 happens to it is I give it a document number and I  
10 image it, and then it is logged into our computer  
11 system, and I can find that document at any point in  
12 time. So I have a count of how many documents I  
13 receive.

14                   As the processors are working these  
15 documents, it records all the steps that happened to  
16 it throughout the way and will finally record when it  
17 is completed and the person is registered or they have  
18 been sent some notice of incomplete. I can run a  
19 report at any time and find out how many applications  
20 I have and what status.

21                   SEN. WEST: Okay. As it relates to --  
22 you have several -- I think you have about three  
23 different exhibits up there, and I'll refer to them  
24 that way. One of them you have -- I think it's 121  
25 applications.

1 MR. JOHNSON: Yeah, we referred to that  
2 as the Dashwood.

3 SEN. WEST: Dashwood, okay. Let's talk  
4 Dashwood.

5 MR. JOHNSON: Okay.

6 SEN. WEST: Did the system -- did your  
7 system work in terms of the Dashwood applications?  
8 And what I mean by that --

9 MR. JOHNSON: Yes, it did.

10 SEN. WEST: What I mean by that -- hold  
11 on for one second. And what I mean by that when those  
12 applications came in, I assume that you assigned them  
13 a number, you imaged them and then sent them through  
14 the process to determine whether they were complete?

15 MR. JOHNSON: Yes. One of the hearts of  
16 any voter registration system is what we call the  
17 street guide, the list of streets broken into what  
18 streets and block ranges belong to a precinct.  
19 Because in order to register a voter, you have to  
20 assign them to some precinct so they receive the  
21 correct ballot, so they're voting for the correct  
22 districts and correct members, you know.

23 SEN. WEST: And that would be one of  
24 the, I guess, checks so to speak?

25 MR. JOHNSON: Correct.

1 SEN. WEST: All right.

2 MR. JOHNSON: So that is the heart of  
3 any voter registration system is the street guide.

4 These particular -- these particular  
5 addresses or cards when they came in, the processor  
6 could not find this -- these streets, these addresses  
7 in our master list of addresses. Now, we get new  
8 streets all the time, so that's why we have a whole  
9 separate mapping department. These applications were  
10 sent to our mapping department so that they could do  
11 research to find this address. They did extensive  
12 research, actually drove to the street to look it up  
13 and found that this block range of that street did not  
14 exist.

15 SEN. WEST: Okay. And were all of the  
16 applications properly filled out?

17 MR. JOHNSON: Not all of them were  
18 properly filled out.

19 SEN. WEST: In fact the majority of them  
20 were not properly filled out. Is that correct?

21 MR. JOHNSON: I have not done a count on  
22 it. I would say, you know, a good percentage of them  
23 were not properly filled out.

24 SEN. WEST: Okay. So in that instance,  
25 the system worked?

1 MR. JOHNSON: Yes.

2 SEN. WEST: Okay. And so the process  
3 worked, and you were able to stop those particular  
4 applications from being processed.

5 As it relates to the issues where we had  
6 people that were voting that were deceased, can you  
7 tell us whether or not -- you can't tell us whether --  
8 how those persons appeared, whether they went to the  
9 polling place, anything like that. Your records just  
10 indicate that someone voted. Is that correct?

11 MR. JOHNSON: No. Now, the voting  
12 information actually comes from our County Clerk's  
13 Office.

14 SEN. WEST: Okay.

15 MR. JOHNSON: They are in charge of  
16 elections, but it does appear on our computer system.  
17 We did a screen shot of those in these records. So if  
18 you want to -- I mean, I can go through the first one.

19 SEN. WEST: I mean, just a question.  
20 Can you tell us whether --

21 MR. JOHNSON: Yes, and let me just  
22 describe the code for any of you-all that have it.

23 SEN. WEST: Well, hold on; hold on for  
24 one second because I just want to know whether you can  
25 tell us whether or not they voted at the -- someone

1 voted at the poll.

2 MR. JOHNSON: Yes, we have a code.

3 SEN. WENTWORTH: Okay. Now, let me --

4 MR. JOHNSON: In the very first  
5 column -- let me tell you something.

6 SEN. WEST: Hold on for a second; hold  
7 on for a second, please. You can tell us that.  
8 That's all I wanted to know.

9 MR. JOHNSON: Okay.

10 SEN. WEST: Now, as it relates to your  
11 office's responsibility for doing any type of check --  
12 well, let me back up.

13 Does your office have a process that you  
14 utilize on a regular basis to check the probate --  
15 check the probate court, anything like that, or check  
16 any type of records to determine whether persons on  
17 the voter roll are now deceased?

18 MR. JOHNSON: Correct.

19 SEN. WEST: How often -- you do have a  
20 process?

21 MR. JOHNSON: We have several processes.

22 SEN. WEST: Okay.

23 MR. JOHNSON: And to start with the --  
24 you asked first about the probate. Probate courts  
25 are, in the Texas Election Code, required to send us

1 their cases that they process.

2 SEN. WEST: Okay.

3 MR. JOHNSON: We receive that  
4 documentation probably once a week from the probate  
5 courts.

6 SEN. WEST: Once a week?

7 MR. JOHNSON: Yeah, I would say roughly,  
8 from Harris County.

9 Then our office takes this upon  
10 ourself -- because I will tell you it's probably one  
11 of the things that's most upsetting to a voter is when  
12 they come in and see their deceased familiar member on  
13 the roll. It's really upsetting. So we actually go  
14 through the Houston newspaper every day and cut out --

15 SEN. WEST: Every day?

16 MR. JOHNSON: Every day.

17 SEN. WEST: Okay.

18 MR. JOHNSON: -- and cut out the copies  
19 of the obituaries to check for those people to see if  
20 they're registered, to remove them.

21 And then the final way that this happens  
22 is actually through the Secretary of State's Office.  
23 They are really now the voter registrar for the State.  
24 They received from -- I believe it's the health  
25 department, the list on -- I don't know if it's weekly

1 or monthly basis, but some basis they receive the  
2 records from the health department of the people that  
3 have passed away, and they pass that through the  
4 statewide system and send us notification.

5 SEN. WEST: Let me ask you something.  
6 Is that the three methods that you utilized, the  
7 Secretary of State --

8 MR. JOHNSON: Yeah.

9 SEN. WEST: -- the obituaries and also  
10 the probate records, court records?

11 MR. JOHNSON: Yeah. Then the other one  
12 that I found that is currently not being recorded that  
13 we do periodically is we also go get the  
14 secretary's -- I mean not the Secretary's -- the  
15 Social Security Administration's death list.  
16 Unfortunately our Texas Secretary of State just  
17 receives death notices from the State of Texas.

18 SEN. WEST: How long --

19 MR. JOHNSON: So if you pass from  
20 outside the state, you would not be on that list.

21 SEN. WEST: How long has that process or  
22 those processes been in place?

23 MR. JOHNSON: They had been in place --  
24 Help America Vote went into place in what, 2004. They  
25 probably didn't get the computer system implemented

1 until 2006.

2 SEN. WEST: Until 2006?

3 MR. JOHNSON: Yes.

4 SEN. WEST: And so when you look at  
5 the -- those persons that -- quote-unquote that are  
6 dead and someone else is voting, how far back does  
7 that go?

8 MR. JOHNSON: I believe most of these  
9 people were canceled in the year 2000.

10 SEN. WEST: I'm sorry?

11 MR. JOHNSON: I believe most of the  
12 people on this list were canceled in the year 2000.

13 SEN. WEST: They were canceled? When  
14 you say "canceled," they were purged from your roll?

15 MR. JOHNSON: Yes. Well, a purge is for  
16 suspense voters.

17 SEN. WEST: Okay. What I --

18 MR. JOHNSON: Cancellations are for --  
19 you know, if they are a deceased, felon, noncitizen --

20 (Simultaneous discussion)

21 SEN. WEST: Okay. So they were canceled  
22 using the process or at least part of the process you  
23 just mentioned?

24 MR. JOHNSON: Yes.

25 SEN. WEST: And part of it had not been



1 implemented by that time, probably 2005, but at least  
2 maybe the Secretary of State going through the  
3 obituaries was utilized for purposes of canceling  
4 those individuals?

5 MR. JOHNSON: You know, since I have  
6 been working in our office, we have -- we have done  
7 all four of those activities before -- before TEAM  
8 came into place where the state was in charge of it.  
9 We used to get records on about a monthly, quarterly  
10 basis from the health department that we would run  
11 against our voter roll, too. We requested those  
12 records, and we'd run them against our voter rolls to  
13 try to clean them up, but that was basically  
14 implemented in about the year 2000 when  
15 Mr. Bettencourt became the Tax Collector/Assessor.

16 SEN. WEST: Would it be a fair statement  
17 that -- say that at least as it relates to those two  
18 that Dashwood and those persons that have been  
19 canceled that there were processes in place in your  
20 office that enabled you, "you" being the office  
21 generically, to find those individuals -- find out  
22 those applications and then turn around and deal with  
23 them?

24 MR. JOHNSON: Well, we found these  
25 cases.

1 SEN. WEST: Okay.

2 MR. JOHNSON: And we found these cases,  
3 you know, I believe just by the due diligence of a  
4 good processor.

5 SEN. WEST: Okay. But you --

6 MR. JOHNSON: I think this is probably  
7 the tip of the iceberg --

8 SEN. WEST: Okay.

9 MR. JOHNSON: -- because we're not out  
10 looking for these cases. They were just ones we came  
11 across.

12 SEN. WEST: Okay. But the reality is  
13 that if someone submits a voter registration  
14 application that's not filled out correctly, that goes  
15 into a pile?

16 MR. JOHNSON: Well, that day we actually  
17 generate a letter out of our system, a letter of  
18 incomplete --

19 SEN. WEST: Okay. But I mean --

20 MR. JOHNSON: -- and we mail it to the  
21 voter.

22 SEN. WEST: But if you have an  
23 application that's not complete --

24 MR. JOHNSON: That's correct.

25 SEN. WEST: -- you will not issue any

1 type of voter registration card. Right?

2 MR. JOHNSON: That is correct.

3 SEN. WEST: Okay. You have a process in  
4 place that you can cancel out persons that are  
5 deceased also. Is that correct?

6 MR. JOHNSON: That is correct.

7 SEN. WEST: All right. And so you have  
8 obviously competent individuals working these  
9 processes because otherwise you wouldn't have them in  
10 your office. Now, so there are processes in place as  
11 it relates to those two?

12 MR. JOHNSON: That is correct.

13 SEN. WEST: Okay. Now, as it relates to  
14 the young lady that was -- received deferred  
15 adjudication, she wasn't convicted, she received  
16 deferred adjudication --

17 MR. JOHNSON: Okay.

18 SEN. WEST: -- what type of case was  
19 that? I me, what actually did your records show to  
20 lead you to believe she had done something?

21 MR. JOHNSON: What made us discover the  
22 case?

23 SEN. WEST: Yeah, what made you think  
24 that there was some fraud going on?

25 MR. JOHNSON: Like I said, a

1 processor --

2 SEN. WEST: Okay.

3 MR. JOHNSON: -- one of the ladies that  
4 actually keys in all the information into our computer  
5 system from the cards, received -- went over to the  
6 tray to be worked, picked up this pile. And as she's  
7 flipping through these cards processing them, she  
8 noticed right off the bat that these were all the same  
9 handwriting. You know, when you're looking at card  
10 after card --

11 SEN. WEST: Okay.

12 MR. JOHNSON: -- you notice that it's  
13 the same handwriting. In fact it was the same pen.  
14 You know, normally when you pick up a stack of cards,  
15 one would be blue, one would be black --

16 SEN. WEST: Sure.

17 MR. JOHNSON: -- you get purple, pastel,  
18 all kinds of colors. Now, they were all the exact  
19 same pen. You know, 60 of them in a row, the same  
20 writing, same pen, it sends off a red flag.

21 SEN. WEST: Okay. And I agree with you  
22 on that. And so again, the process was able to pick  
23 that up?

24 MR. JOHNSON: Correct.

25 SEN. WEST: Okay. All right. Now, you

1 would agree with me -- you may agree with me, I'll put  
2 it like that -- that you have processes in place in  
3 order to make certain that you don't certify or  
4 provide a voter registration card for someone that  
5 doesn't complete the application appropriately; that  
6 you have a process in place to cancel out individuals  
7 that are deceased; and you have competent individuals  
8 working within your establishment to -- if they see  
9 instances of what they believe rises to the level of  
10 voter fraud, that they take those cards out and review  
11 them or investigate them. Is that correct?

12 MR. JOHNSON: We have processes to try  
13 to catch, you know, voter registration fraud when it  
14 comes through. I will tell you the election code is  
15 written real loosely and doesn't give us the proper  
16 tools to do this job, I would say, in the best manner  
17 it could be done.

18 SEN. WEST: Okay. Let's -- you said  
19 "the tools." What tools would you need?

20 MR. JOHNSON: Well, this one -- one that  
21 was just brought up here for an example, that you can  
22 take our current voter registration application, write  
23 any name you want to on here, check the boxes that you  
24 don't have a driver's license or a citizenship,  
25 there's no validation check at all. All I'm looking

1 for is did you fill in every box on here, and you're  
2 registered to vote. And there's nothing -- there's no  
3 tools, there's nothing in the law that allows me to  
4 validate this. There's no list to validate it against  
5 that this is a real person. So I consider that kind  
6 of a hole in the -- in the system.

7 SEN. WEST: Now, would you agree or  
8 disagree that most states have the same process,  
9 though?

10 MR. JOHNSON: I'm not real familiar  
11 with all states' laws. I do know that all state laws  
12 have to comply with the National Voter Registration  
13 Act and Help America Vote.

14 SEN. WEST: Does this particular voter  
15 registration card comply with that act?

16 MR. JOHNSON: It does comply with that  
17 act, but I will tell you there are a lot of different  
18 voter registration cards. I do see other states'  
19 applications because they can mail them to me. You do  
20 not have -- in Texas you do not have to use this  
21 official card to register. As long as you have the  
22 information that's required to register written on a  
23 piece of paper, we can use it as a voter registration  
24 card.

25 SEN. WEST: But it does comply with the

1 national act?

2 MR. JOHNSON: This does.

3 SEN. WEST: All right. Thank you on  
4 that. I don't think I have any other questions.  
5 Thank you.

6 MR. JOHNSON: All right. Thank you.

7 SEN. DUNCAN: The Chair recognizes  
8 Senator Gallegos.

9 SEN. GALLEGOS: Thank you, Mr. Chairman.  
10 Mr. Johnson, you said you're the  
11 Assistant Registrar at Harris County?

12 MR. JOHNSON: Associate Director. I  
13 have one person above me. Then he reports -- that  
14 person above me reports to the Tax Collector/Assessor.

15 SEN. GALLEGOS: Who is the Director?

16 MR. JOHNSON: Leo Vasquez is the Tax  
17 Collector/Assessor in Harris County now.

18 SEN. GALLEGOS: So he's the one right  
19 above you?

20 MR. JOHNSON: No. I have a person in  
21 between us.

22 SEN. GALLEGOS: Oh, who is the one in  
23 between?

24 MR. JOHNSON: His name is George  
25 Hammerlein.

1 SEN. GALLEGOS: Who?

2 MR. JOHNSON: His name is George  
3 Hammerlein.

4 SEN. GALLEGOS: Oh, okay. All right.  
5 But I mean, you work in the registrar's office?

6 MR. JOHNSON: Yes. George was not able  
7 to make it today --

8 SEN. GALLEGOS: Okay.

9 MR. JOHNSON: -- as your colleague  
10 behind you knows because of a knee injury.

11 SEN. GALLEGOS: But he's lucky; he's  
12 lucky, let me tell you. Okay. So you work in the  
13 registrar's office.

14 Now, Sen. West asked you about these  
15 first -- one of the first questions he asked you  
16 about these -- and I live in Harris County, by the  
17 way.

18 MR. JOHNSON: Yes, sir.

19 SEN. GALLEGOS: And that 13 timely --  
20 13,000 timely voter registration applications had not  
21 been processed for early voting. That came out in the  
22 news. You worked under Bettencourt. Right?

23 MR. JOHNSON: Yes, sir.

24 SEN. GALLEGOS: Okay. It came out in  
25 the news. Bettencourt was there. We had no answer



1 from him. You didn't know that? You told Sen. West  
2 you didn't know that. You're the Assistant Registrar,  
3 or whatever your title is, and you didn't know that?  
4 I was there. Were you there?

5 MR. JOHNSON: Where is "there" that  
6 I'm --

7 SEN. GALLEGOS: In Harris County, that's  
8 where "there" --

9 MR. JOHNSON: I'm there in Harris  
10 County. Now, you know what I need is --

11 SEN. GALLEGOS: Well, if you didn't know  
12 that and you're the Assistant Registrar, is that your  
13 job?

14 MR. JOHNSON: If you give me a date --

15 SEN. GALLEGOS: Is that your job?

16 MR. JOHNSON: No, it's not my job.

17 SEN. GALLEGOS: It's not your job to  
18 look at these?

19 MR. JOHNSON: It's my job to process  
20 those voter registrations.

21 SEN. GALLEGOS: I understand that, sir.

22 MR. JOHNSON: If you tell me a date --  
23 sir, if you tell me a date, I can tell you exactly how  
24 many cards we had worked and not worked.

25 SEN. GALLEGOS: Well, I can tell you

1 this: If I had your job, somebody asked me that  
2 question, about 13,000, the majority of them  
3 minorities that had not been processed when early  
4 voting started, I would know that because that's my  
5 job. That's what the taxpayers pay me for.

6 MR. JOHNSON: Can I ask you a question?

7 SEN. GALLEGOS: You didn't know that?

8 MR. JOHNSON: Can I ask you a question?

9 How do you --

10 SEN. GALLEGOS: No, no, no. I'm asking  
11 the questions. You cannot ask questions. You're a  
12 witness. I'm asking the questions.

13 Now, answer me yes or no. Is that your  
14 job?

15 MR. JOHNSON: I have not seen the  
16 article that you're referring to.

17 SEN. GALLEGOS: There's no article. It  
18 was in the papers. Everybody, everybody, everybody  
19 was arguing with Bettencourt.

20 MR. JOHNSON: Well, in the paper there  
21 was an article.

22 (Simultaneous discussion)

23 SEN. GALLEGOS: Obviously you were on  
24 vacation. I'm sorry.

25 SEN. DUNCAN: Let me please instruct

1 both of you to allow -- or not talk at the same time  
2 because the court reporter can't get your testimony.

3 SEN. GALLEGOS: I'll ask you again.  
4 Were you -- were you on vacation during that period?

5 MR. JOHNSON: In which period of time  
6 are you referring to?

7 SEN. GALLEGOS: Well, the election.  
8 That's exactly the question that Sen. West asked you,  
9 the election -- the election in the fall, the  
10 Presidential Election when early voting started.

11 MR. JOHNSON: If you're talking about  
12 the month before the election, no, I was not on  
13 vacation.

14 SEN. GALLEGOS: Well, then you should  
15 know these answers. That's what we pay you for. Is  
16 that not correct?

17 MR. JOHNSON: I'm sorry, sir. I have  
18 not seen that article. I don't know what you're  
19 referring to.

20 SEN. GALLEGOS: All right.

21 MR. JOHNSON: If you would like to know  
22 how many people -- how many voter registration cards I  
23 had on any particular day, you know, I can -- when I  
24 get back to the office, I can look that up for you.

25 SEN. GALLEGOS: That's not -- that's not

1 the question I asked you. That is not --

2 MR. JOHNSON: Well, you're asking me  
3 about how many applications we --

4 (Simultaneous discussion)

5 SEN. GALLEGOS: That is not the question  
6 I asked you.

7 Okay. Let me -- let me go to the second  
8 question where Sen. West asked you and you did not  
9 answer him, and you're the Assistant Registrar in  
10 Harris County being paid by taxpayers, that Harris  
11 County disqualified nearly 70,000 -- 70,000  
12 applications, the majority minority. I mean, you  
13 didn't know about this? That's a lot -- that's a lot  
14 of disqualifications. And you're the assistant  
15 registrar. You didn't know that?

16 MR. JOHNSON: What is the time period  
17 that you're talking about there in the article?

18 SEN. GALLEGOS: I just told you, right  
19 before -- right before the General Election in the  
20 fall of '08.

21 MR. JOHNSON: Is that -- is the month  
22 before the General Election, two months, three months?  
23 You know, I have to know a timeframe, and I can tell  
24 you exactly how many letters we sent out of incomplete  
25 during that time.

1                   SEN. GALLEGOS: Right before the  
2 election.

3                   MR. JOHNSON: And that is not a -- that  
4 is not a disqualification. A letter of incomplete  
5 just says that you have missed one of the required  
6 fields in the application. It gives them another  
7 opportunity to register to vote.

8                   SEN. GALLEGOS: These applications,  
9 these people were disqualified. Either way you call  
10 it, you can call it -- you sent out a letter, whatever  
11 you say, they were disqualified. They couldn't vote.

12                  All right. Let me -- let me go to  
13 another question.

14                  MR. JOHNSON: Can I ask you a question  
15 while that --

16                  SEN. GALLEGOS: No, no, you can't ask me  
17 a question. I'm the one asking the questions.  
18 Obviously whoever told you you could testify here  
19 didn't tell you the rules of the Senate, whether we're  
20 in the Committee of the Whole or in a Committee.

21                  Now, let me ask you, I'm looking at a  
22 document that Paul Bettencourt put out, and I was  
23 there because he did -- he did a PowerPoint on -- and  
24 I don't know if you were there with him when he did  
25 this PowerPoint. It was called the Texas Voter

1 Registrar, Keeping It Real. Do you remember that one?

2 MR. JOHNSON: I have seen that  
3 PowerPoint.

4 SEN. GALLEGOS: Have you seen the  
5 PowerPoint?

6 MR. JOHNSON: Yes, I have.

7 SEN. GALLEGOS: All right. In his  
8 PowerPoint -- okay. I'm going by his document, the  
9 document he passed out to everybody there. I'm going  
10 by his -- it says "Paul Bettencourt" on there. He was  
11 the registrar, wasn't he?

12 MR. JOHNSON: Yes, he was.

13 SEN. GALLEGOS: Okay. It says here  
14 "City of Houston Case Study." This is his document,  
15 not mine. "The General Election of November 2001 and  
16 Runoff Election December 2001, these are results of  
17 the Harris County book audit on potential fraud in  
18 these elections." He said the majority of what he  
19 found was the wrong precinct. And there's another  
20 column that a majority of what he found was not  
21 registered. And in another column, the majority of  
22 what he found was deleted. And then the graph goes  
23 from zero to 700. It says "moved out of county" --  
24 that was another one that he found -- "was right  
25 under 100."

1                   Now, the real things that we're looking  
2 for and what this bill is trying to clear up is felons  
3 and not a citizen and deceased, which I'm going to get  
4 to in a minute. On felons it looks here barely ten,  
5 about ten per Paul Bettencourt's graph; not a citizen,  
6 it's barely a speck on this chart; and deceased, none.  
7 This is per his PowerPoint that he passed out at the  
8 seminar that I was at. These are his numbers, not  
9 mine, that say there was hardly anything from felon to  
10 not a citizen to deceased is almost zero. It's almost  
11 zero per his chart.

12                   MR. JOHNSON: Can I explain this part?

13                   SEN. GALLEGOS: And have you even seen  
14 this chart? Do you know about this chart?

15                   MR. JOHNSON: I've seen that chart. Can  
16 I explain that chart, sir?

17                   SEN. GALLEGOS: Go ahead and explain it.

18                   MR. JOHNSON: Okay. That is a -- what  
19 we refer to as a poll book audit that happened after a  
20 City of Houston election in 2001. After every  
21 election I told you we review the poll book -- this is  
22 after the election is over with -- we review the poll  
23 book to find voter registration problems or  
24 discrepancies. One of the things we checked for since  
25 it was a City of Houston election, they have what they

1 call split precincts, not the whole precinct can  
2 possibly be in the city. So you can have a precinct  
3 that's voting, but you cannot live in the City of  
4 Houston. That's what those out-of-precincts are, is  
5 those people were in that precinct voting --

6 SEN. GALLEGOS: I know what they are.

7 MR. JOHNSON: -- but they didn't live in  
8 the City of Houston, but they voted in the City of  
9 Houston election. That is -- that is someone voting  
10 in the wrong district. That is against the law.

11 The ones that moved out of county, they  
12 didn't live in Harris County, and they voted in Harris  
13 County. That is someone that is not registered here  
14 or should not have been registered here that voted in  
15 our county.

16 SEN. GALLEGOS: Were any of these --  
17 were any of these what you're saying voted in the  
18 wrong county, were they convicted?

19 MR. JOHNSON: They were all turned  
20 over -- that whole report was turned over to the  
21 District Attorney's Office, and once again --

22 SEN. GALLEGOS: All right.

23 MR. JOHNSON: -- they didn't have the  
24 evidence to make the prosecution.

25 SEN. GALLEGOS: That leads me to my next



1 question. You said you had 133 complaints that are  
2 still at the District Attorney's Office. Do we know  
3 if any of those were convicted? Do you know that?

4 MR. JOHNSON: No, I do not know the  
5 status.

6 SEN. GALLEGOS: But you did say there  
7 was 133 complaints at the D.A.'s Office, and you can't  
8 tell us yes or no? You don't know?

9 MR. JOHNSON: No, the D.A. does not  
10 report to me.

11 SEN. GALLEGOS: Okay. All right. All  
12 right. Let's go back to your deceased. I don't know  
13 how you explained it to Sen. West. Tell me the  
14 process on how you -- okay. You go through the  
15 Chronicle, you go through the obituaries. Is that  
16 correct?

17 MR. JOHNSON: In our office our  
18 procedures for finding out or trying to discover  
19 deceased voters is, yes, we go through the obituaries  
20 of the Houston Chronicle every day.

21 SEN. GALLEGOS: So you go through the  
22 obituaries and you find out who died?

23 MR. JOHNSON: We get the probate records  
24 from the probate court, and we get a list --

25 SEN. GALLEGOS: And you put them up

1 against -- up against your list on your registrar  
2 list?

3 MR. JOHNSON: Correct.

4 SEN. GALLEGOS: Okay. And you  
5 determine --

6 MR. JOHNSON: We get the list from -- we  
7 get the list from the Texas Health Department of the  
8 deceased voters here in Texas, and then periodically  
9 we also purchase the social security death index and  
10 run it against the voter roll to try to find matches.

11 SEN. GALLEGOS: And that's how you  
12 determine that they are deceased?

13 MR. JOHNSON: We determine that they are  
14 possibly deceased. Then on those voters we actually  
15 send them notices to the last known address. We call  
16 it "To The Family Of" letters asking the family  
17 members if they're still there to confirm our  
18 findings.

19 SEN. GALLEGOS: Okay. But the 24 in  
20 your testimony, that's kind of like the process you  
21 went through. You went through the newspaper, you  
22 went through the --

23 MR. JOHNSON: That is correct.

24 SEN. GALLEGOS: Okay. All right. Now,  
25 that's a "yes." Right?

1 MR. JOHNSON: Yes.

2 SEN. GALLEGOS: Okay. Well, let me --  
3 Mr. Johnson, would it interest you to know that right  
4 before the end of the year it was time for me to renew  
5 my license, and I went to your office and --

6 MR. JOHNSON: Can I make a correction?  
7 We do not do driver's license renewals.

8 SEN. GALLEGOS: Well, no, no, no, it's  
9 under -- it's under the registrar's office.

10 MR. JOHNSON: No, we do not -- that's  
11 under the Department of Public Safety. We do not do  
12 driver's license renewals.

13 SEN. GALLEGOS: Well, it was Bettencourt  
14 that called me.

15 MR. JOHNSON: If Mr. Bettencourt called  
16 you, he wasn't affiliated with our office.

17 SEN. GALLEGOS: Well, he's the one that  
18 called me. Are you sure you're not -- you're not with  
19 the driver's license renewals?

20 MR. JOHNSON: Are you talking about --  
21 now, are you talking about your driver's license, or  
22 are you talking about your --

23 SEN. GALLEGOS: No, no, no. I'm talking  
24 about -- excuse me -- my license on my car.

25 MR. JOHNSON: Your auto plates?

1 SEN. GALLEGOS: Yeah.

2 MR. JOHNSON: The plates on your car?

3 Yes, we do do --

4 SEN. GALLEGOS: That's what you're in  
5 charge of. Right?

6 MR. JOHNSON: We do do that in our  
7 office.

8 SEN. GALLEGOS: Okay. That's a "yes."  
9 Right?

10 MR. JOHNSON: Yes.

11 SEN. GALLEGOS: Okay. Would it interest  
12 you to know that when I went to renew my license and  
13 entered your office there at the registrar's office  
14 that they told me I could not renew, and they told me  
15 the reason was because on their rolls it showed that I  
16 was deceased? Did you know that?

17 MR. JOHNSON: No, I did not know that.

18 SEN. GALLEGOS: Okay.

19 MR. JOHNSON: That is -- that is a whole  
20 different department, and that is actually run by  
21 TxDOT.

22 SEN. GALLEGOS: Well, wait, wait, wait  
23 a minute.

24 MR. JOHNSON: And if that was a TxDOT  
25 record that showed you --

1 SEN. GALLEGOS: I went to the  
2 registrar's office. It was your office. It's was --

3 MR. JOHNSON: The TxDOT --

4 SEN. GALLEGOS: At that time, was  
5 Paul Bettencourt your boss or not?

6 MR. JOHNSON: Yes, he was --

7 SEN. GALLEGOS: Okay.

8 MR. JOHNSON: -- but we report to TxDOT.  
9 TxDOT runs that organization. If there was your  
10 record marked as deceased, it was TxDOT that marked  
11 it.

12 SEN. GALLEGOS: Well, why would  
13 Paul Bettencourt call me and apologize?

14 MR. JOHNSON: We are -- we are an agent  
15 of theirs. I guess he was being --

16 SEN. GALLEGOS: Well, then it was your  
17 people.

18 (Simultaneous discussion)

19 SEN. DUNCAN: Okay. Let me -- let me  
20 interrupt. I hate to interrupt, but you're not making  
21 a record. And if you want to make a record, you  
22 really need -- both of you need to maintain the  
23 decorum of one speaking at a time. The court reporter  
24 cannot get your testimony if you're speaking over each  
25 other, and both of you are doing it. It's not just

1 one of you, both of you are. So if you could slow it  
2 down a little bit and let the court reporter keep up  
3 with you, that would be helpful for the record.

4 SEN. GALLEGOS: Mr. Chairman, I'm trying  
5 to make a point here that it was the registrar's  
6 office that was handling -- that was handling my  
7 renewal of my license tag, and Mr. Johnson says that's  
8 TxDOT, but it's the registrar that's handling that,  
9 all the information on the registrar's computer -- on  
10 the registrar's computer in that -- in that county  
11 office. Is that correct? Is that yes or no?

12 MR. JOHNSON: That is a "yes" --

13 SEN. GALLEGOS: Okay.

14 MR. JOHNSON: -- that it's in our  
15 office, but, sir --

16 SEN. GALLEGOS: All right.

17 MR. JOHNSON: -- you were just talking  
18 about things that I need, and that's the tools I need.  
19 TxDOT will not let us link into their system to copy  
20 or get access to those records so that we can match it  
21 up to voter rolls to find out when people move so that  
22 we can send them notices or applications to try to get  
23 them re-registered. So if you would like to help us,  
24 pass a bill that would allow TxDOT to give us that  
25 information.

1                   SEN. GALLEGOS: But it was your  
2 computer, not TxDOT's.

3                   MR. JOHNSON: No, it's TxDOT's  
4 computers. The computers that we use in our office  
5 belong to TxDOT.

6                   SEN. GALLEGOS: But it was your agents  
7 that were handling it.

8                   MR. JOHNSON: Yes, they work for the  
9 Harris County Tax Office.

10                  SEN. GALLEGOS: Okay. All right.

11                  MR. JOHNSON: The computer system is  
12 TxDOT's, and it's closed, and they do not let us have  
13 access to it.

14                  SEN. GALLEGOS: Well, if you had me  
15 deceased there on that computer at the registrar's  
16 office, whether it's TxDOT or not, and your agents  
17 were handling it, if I had -- if I had voted during  
18 that time that you had me deceased, would I show up --  
19 would I show up on your rolls?

20                  MR. JOHNSON: You were still a  
21 registered voter on our rolls. That TxDOT record has  
22 nothing to do with your voter registration.

23                  SEN. GALLEGOS: That's not what -- that  
24 wasn't my question. On your computer, the computer  
25 that your agents handle --

1 MR. JOHNSON: On the computer that I'm  
2 in charge of that handles the voter registration roll,  
3 you are an active voter.

4 SEN. GALLEGOS: How do you know that?

5 MR. JOHNSON: Did you vote?

6 SEN. GALLEGOS: I'm talking -- yeah, I  
7 voted, but I'm talking about during the time --

8 MR. JOHNSON: Then you're an active  
9 voter.

10 SEN. GALLEGOS: -- during the time that  
11 the computer showed that I was deceased, had I voted,  
12 would I be on that list with those 24? Yes or no?

13 MR. JOHNSON: No, you would not have  
14 been on that list.

15 SEN. GALLEGOS: Are you sure?

16 MR. JOHNSON: I'm sure.

17 SEN. GALLEGOS: You're positive?

18 MR. JOHNSON: I'm positive.

19 SEN. GALLEGOS: Okay. All right. So --  
20 and your office is not -- so you're saying it's  
21 Beverly Kaufman's Office that's in charge of the last  
22 question that Sen. West asked you on the provisional  
23 ballots given after seven o'clock instead of letting  
24 them cast their ballots. Is that correct?

25 MR. JOHNSON: That is correct.



1 SEN. GALLEGOS: Okay. Mr. Johnson,  
2 thank you.

3 SEN. DUNCAN: Mr. Johnson, I don't think  
4 there's any other queued up. If you want to -- you  
5 are excused. Thank you for your testimony.

6 MR. JOHNSON: Thank you.

7 **TESTIMONY BY DANIEL B. KOHRMAN**

8 SEN. DUNCAN: The Chair calls  
9 Daniel Kohrman. Mr. Kohrman, do you have written --  
10 you have written testimony, I believe. It will be  
11 Exhibit No. --

12 MR. KOHRMAN: Yes, sir.

13 SEN. DUNCAN: -- 35. We'll go ahead and  
14 put that in the record.

15 (Exhibit No. 35 marked and admitted)

16 SEN. DUNCAN: If you'll state your name  
17 and who you represent, and you have ten minutes.

18 MR. KOHRMAN: Thank you. Good morning,  
19 Mr. Chairman, Members of the Committee. My name is  
20 Daniel Kohrman. I'm a senior attorney with the AARP  
21 Foundation. The foundation is the charitable arm of  
22 AARP. I represent AARP, AARP's members and older  
23 persons generally.

24 One of my responsibilities is to  
25 represent the cause of access to the ballot for older

1 voters. By way of background, I'm one of the lawyers  
2 for voters, including older voters, in the litigation  
3 regarding photo ID in Arizona and in Georgia. I've  
4 also filed briefs on behalf of AARP in photo ID cases  
5 in Michigan and Missouri in the state courts and also  
6 in the U.S. Supreme Court in the Indiana case that  
7 we've discussed. Finally, AARP has filed a brief  
8 supporting the senior citizen plaintiffs in the  
9 absentee ballot case here in Texas, the Ray case that  
10 we discussed a little earlier this evening.

11 And just so that you know a bit more  
12 about me before I came to AARP, about seven years ago  
13 I worked for a big law firm, a civil rights  
14 organization, the lawyers committee that you heard  
15 about before, and also for the U.S. Department of  
16 Justice.

17 As you know, AARP members vote in very  
18 large numbers and are very proud of their active  
19 participation in the political process at all levels,  
20 state, local and federal. I work out of the  
21 headquarters in D.C., but today I'm here representing  
22 AARP of Texas, which is one of 53 state offices we  
23 have across the U.S.

24 I want to say that given the intense  
25 partisanship that we've seen here today and that has

1 developed around this issue of voter ID, photo ID, I  
2 want to emphasize that AARP is a nonprofit nonpartisan  
3 organization dedicated to addressing the needs and  
4 interests of Americans age 50 and older. AARP has no  
5 interest in the partisan aspects of the photo ID  
6 issue.

7 What we do care about is representing  
8 the interests of older Americans. We have more than  
9 40 million members nationwide and about two and a half  
10 million here in Texas, and both in this state and  
11 across the U.S. We're the largest membership  
12 organizations of older persons and older voters.

13 All right. While I appreciate the  
14 opportunity to speak with you here so late and so  
15 early about Senate Bill 362, just to start, I want to  
16 say that AARP's overall perspective is that the right  
17 to vote is the most basic right in our Democratic  
18 system, and our view is that legislative bodies and  
19 politicians should tread carefully in the field of  
20 voting rights. Voting rights should not be casually  
21 restricted.

22 Now, we understand that historically and  
23 under our Constitution the states are the principle  
24 sources of laws and regulations in the area of voting,  
25 but we do not conclude from this that states should

1 feel free to take whatever action is expedient.  
2 Certainly where there's a need to act to protect  
3 voters, there's a duty to step forward. But absent  
4 such a need, our view is that states have a duty not  
5 to rush in. And as it is said of doctors, so it is  
6 true in the field of voting and elections, first do no  
7 harm.

8 AARP policy is clear. We have focused  
9 on trying to encourage simple, fair procedures. And  
10 most relevant for our purposes here today our policy  
11 states that state government should adopt procedures  
12 to detect and prevent voter fraud, but policies that  
13 do not permit arbitrary and discriminatory reviews, ID  
14 challenges and misuse of provisional ballots in ways  
15 that discourage voter registration and turnout. And  
16 our concern about photo ID laws is that they do just  
17 that.

18 Just this past Sunday in the Rio Grande  
19 Guardian, the paper reported one in five senior woman  
20 don't have a driver's license, quoting the U.S. Census  
21 Bureau. 18 percent of Americans over age 65 don't  
22 have a driver's license, quoting the Brennan Center  
23 from whose representative you heard earlier today, and  
24 also that 37 percent of Texans over 80 don't have a  
25 driver's license.

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1                   We did some surveys in connection with  
2 some of the litigation matters you've heard about. In  
3 Indiana our survey suggested that 3 percent of people  
4 over 65 have neither a driver's license nor a  
5 state-issued ID, and that's about 23,000 people. In  
6 Georgia our estimates suggested over 100,000 over age  
7 65 lack a driver's license and the number is something  
8 like double that in Missouri.

9                   What's hard to understand for us is why  
10 public officials would embrace measures that have this  
11 kind of impact on older voters when in the next couple  
12 of decades the older population will be growing by  
13 leaps and bounds so that most of the growth in the  
14 voting population will be among the older voters.

15                   I want to refer you to testimony that  
16 AARP Texas' Advocacy Director Amanda Fredericksen gave  
17 to a House Committee in 2006 noting some of the harms  
18 and difficulties posed for older persons who seek to  
19 access the ballot, but are caught up in photo ID  
20 requirements and are precluded from voting.

21                   There was an 80 year old who sought a  
22 state-issued ID card in Indiana. We put this in our  
23 Supreme Court brief. She finally succeeded only after  
24 paying multiple fees, navigating a maze of public  
25 record laws and making multiple trips to public

1 offices. And then there was a 61-year-old social  
2 security recipient who was barred from voting in the  
3 lobby of her retirement home as she had done for past  
4 elections. Poll workers who had known her for years  
5 were not allowed to let her vote because she didn't  
6 have the form of ID, and we're concerned that's going  
7 to happen in Texas.

8 Now, let me cut to the chase here, and  
9 I've summarized in my testimony some major concerns we  
10 have with this law in particular. We've talked about  
11 big picture issues, other states, other cases and  
12 we've talked, to some degree, precious little about  
13 the actual bill that's before this chamber.

14 The first concern is that the law does  
15 very little to educate the public about the changes it  
16 proposes to make. It relies almost exclusively on the  
17 individual voter registration renewal process. It  
18 relies on Websites, the Secretary of State and the  
19 counties, but as far as I understand it, only  
20 one-third of the counties actually have Websites.

21 Our members in particular, I would have  
22 the concern, would both be adversely affected by a  
23 process that relies on a routine mailing procedure.  
24 They have voted for many, many years and cannot be  
25 expected to automatically pick up on all the new

1 changes. More likely they're going to assume that  
2 their registration is just as it has been before. And  
3 as far as Websites, our members are getting ever more  
4 tech savvy, but relying on the Internet to serve older  
5 voters is a dangerous proposition.

6 The second concern is a related one.  
7 There's lack of plans for public outreach. One way to  
8 describe the approach of this bill, in our frame of  
9 thinking, is that it's completely passive. You get a  
10 mailing, you have a bit of information posted on a  
11 Website. There's nothing going out to the public.  
12 There's nothing going out in terms of mobile vans as  
13 there was in Georgia or other public education. We  
14 heard about advertisements. I noted that nothing of  
15 that was planned to involve photo ID in particular.

16 As far as the substantive concern about  
17 what the experience is like for voters, I just want to  
18 make two quick points.

19 SEN. DUNCAN: I've been holding  
20 everybody pretty strict. If somebody wants to ask a  
21 question --

22 MR. KOHRMAN: Okay.

23 SEN. DUNCAN: I think Sen. Uresti --  
24 your time has expired.

25

QUESTIONS FROM SENATE FLOOR

SEN. DUNCAN: Sen. Uresti, you're recognized.

SEN. URESTI: Thank you, Mr. Chairman.

Mr. Kohrman, good morning, and I'll follow up on what you were just completing in a moment, but I wanted to go back to something that you just talked about with regard to the Websites. And I think you mentioned in your testimony one-third of the counties have Websites. But do you have an idea of how many of your members actually have a computer much less access to the Internet?

MR. KOHRMAN: Well, I would say two things: One, I think it's very easy to stereotype older voters and older people. I think more and more of them -- the profile is more typical of the average population than what most people think. But the plain fact of it is when you look at people who are infirm, older people with disabilities that is, older people in assisted living or nursing homes, those kinds of residential situations, people of low income certainly, they are very unlikely to have access to the Internet and very unlikely to benefit from that kind of information.

SEN. URESTI: And one of the reasons I



1 bring that up, and I realize many of our seniors are  
2 more advanced when it comes to the Internet, but  
3 speaking about my parents specifically and they're in  
4 their 70s, very intelligent. However, my father  
5 refuses to use a computer, probably because he doesn't  
6 know how, much less accessing the Internet. So I'm  
7 sure that there are many other seniors in Texas,  
8 specifically in the district that I represent, that  
9 don't have access.

10 You were about to complete a sentence,  
11 and I know the time cut you off. Would you like to  
12 finish that thought?

13 MR. KOHRMAN: No. I just -- that the  
14 public outreach activities that were demanded by the  
15 court in Georgia, in effect, are very much relevant  
16 here because what we have is a law that proposes to  
17 take effect at the very beginning of 2010 and yet  
18 relies almost completely on a notification process in  
19 the course of renewing registrations that has, as I  
20 understand it, a two-year cycle.

21 Therefore, in our view, the minimum time  
22 that should be required for this set of new  
23 requirements to be effective should be at least two  
24 years and probably longer than that so that you have a  
25 whole cycle. If you're going to rely on mailings that

1 people will only get some time in the next two years,  
2 it should be a cycle that long at least before this  
3 law takes effect.

4 SEN. URESTI: And the reason for the two  
5 years is so that you can allow for training and  
6 outreach?

7 MR. KOHRMAN: Well, in the first place,  
8 there's no guarantee that people will be notified of  
9 the requirements of the law at all. Given that  
10 there's nothing in this bill by way of funding or  
11 programs, at least as far as I can tell, to contact  
12 voters about the specific requirements of photo ID,  
13 people won't know. And what you will have is people  
14 showing up at the polls, registered voters who have --  
15 who expect that they can vote on the terms they always  
16 have. And what they will find -- in particular in  
17 some circumstances, they will come perhaps without  
18 their registration. And under current law if you come  
19 without your registration but you're on the rolls, you  
20 sign an affidavit and you cast a regular ballot. But  
21 under the law as it would be revised, you have to show  
22 photo ID.

23 Now, if you haven't had notice except if  
24 you read the papers closely enough to know what this  
25 body and the House may pass someday, you're not going

1 to know that requirement. And so what you're going to  
2 do is you're going to show up -- and we think that's  
3 typical of our members. They are going to do what  
4 they've always done, they're going to show up, they  
5 may forget, they may misplace, they may lose, they may  
6 not get in time their certificate. They show up to  
7 vote and whereas in the past they could just sign an  
8 affidavit, cast a regular ballot, they'll have to file  
9 a provisional ballot that won't be counted, and that's  
10 a big problem for us.

11 SEN. URESTI: And we've heard over the  
12 past several hours of testimony from some of my  
13 colleagues that it's no big deal, that you can just  
14 show up with an electricity bill or another piece of  
15 documentation, but I would assume that many of our  
16 seniors may be widowed, and some of the documentation  
17 that they have was in their husband's name, for  
18 instance, or perhaps in their wife's name. And as you  
19 said, Mr. Kohrman, they may show up, they may be  
20 waiting for a ride from one of their sons or their  
21 neighbors at the end of the day. By the time they do  
22 show up to vote, they will not have that  
23 documentation. Do you think that's going to be a  
24 problem for our seniors when it comes time for voting?

25 MR. KOHRMAN: Well, we've heard from a

1 number of people about problems with some of the  
2 specific alternative forms of identification that have  
3 been alluded to by some of the proponents. And of  
4 course older voters have and older persons have  
5 particular problems with some of those forms of ID,  
6 very much so. Older women may have been -- have moved  
7 into the state from other states. They may have  
8 marriage certificates from -- with a name that's -- in  
9 other words, the documents that they might need to get  
10 a birth certificate are different in name than their  
11 current married name, they've changed their name. And  
12 so if they have to get an out of state marriage  
13 document or divorce decree or birth certificate,  
14 they're going to have trouble.

15 We've had problems in many of these  
16 southern states with older -- older woman, older men  
17 who were born -- and this really applies to people of  
18 color in particular who were born outside of hospitals  
19 and may not even be able to get a birth certificate.

20 SEN. URESTI: Do you see any potential  
21 barriers for our seniors that are trying to obtain a  
22 photo identification?

23 MR. KOHRMAN: Well, what is of concern,  
24 as I've said, is the fact that there's no -- there's  
25 no effort to notify them, and there's not a realistic

1 set of measures that will likely notify them.

2 Furthermore, there appears to be no plan  
3 or money for training of the actual people who will  
4 interact most often and most intensely at the polling  
5 place with all voters, but particularly older voters,  
6 election officers so called. There appears to be no  
7 money or plan for training these folks so that when  
8 people show up at the polls surprised by the new laws  
9 and the changes, what we're concerned about is that  
10 our people will have particular troubles, especially  
11 if a lot of folks that they're going to have to  
12 interact with are given insufficient training.

13 SEN. URESTI: Mr. Kohrman, do you think  
14 there will be additional barriers if this legislation  
15 does pass for the voters that may reside with family  
16 members who are in an assisted living facility or in a  
17 nursing home?

18 MR. KOHRMAN: Well, that raises the  
19 issue of outreach again. Our fundamental view is  
20 that -- and you've heard this from many people -- that  
21 this is an issue that is a solution that's looking for  
22 a problem. Our view of it is that what this chamber  
23 should focus on is the fact that there are lots of  
24 voters who need assistance and encouragement and  
25 facilitation to get them to vote.

1                   We have lots of people, for instance,  
2                   who change addresses when they move into different  
3                   residential facilities when they become somewhat more  
4                   infirm or interested in finding a situation where they  
5                   can age in place and have access to medical care.  
6                   When they change their address and if they don't have  
7                   family who are looking out for them, what they may  
8                   need is registrars who are going out to facilities  
9                   where older people are to register people to vote and  
10                  to help them to vote.

11                  There are states across this country  
12                  that have allocated resources, not to these ID checks  
13                  that we feel are not very productive and not likely to  
14                  solve this supposed problem of fraud, but instead of  
15                  allocating their resources to seek out voters who  
16                  have -- who are not participating but want to  
17                  participate. So we would like -- we would like state  
18                  officials and county officials to be seeking out older  
19                  voters who are still capable of voting, but may have  
20                  mobility challenges that keep them from voting like  
21                  they did 10, 20 years ago.

22                  SEN. URESTI: Mr. Kohrman, we've heard  
23                  testimony about different forms of nonphoto  
24                  identification, and one example that I heard earlier  
25                  was Texas -- was a Medicaid card. Do you know if

1 Texas actually issues a Medicaid card?

2 MR. KOHRMAN: Well, I apologize. I  
3 don't really know that, but there may be -- there may  
4 be some forms of this photo ID that are available to  
5 many seniors, and we're not saying that this is an  
6 impossible situation, but I will say about the best  
7 you can say about this photo ID proposal is that it is  
8 not as harsh and not as bad as the most restrictive  
9 laws in a few states, but it imposes all kinds of  
10 burdens on voters who are the most committed to  
11 participating in our democracy, which are older  
12 voters, and it's going to make a lot of unnecessary  
13 impediments.

14 If you imagine the situation -- another  
15 situation that's covered by the law, which is someone  
16 who shows up at the polls who has their voting card  
17 but isn't on the rolls, and that's, I think, Section 9  
18 of the bill. Right. It seems to me that that would  
19 be another situation where instead of requiring a  
20 photo ID, what you should require is a -- is an  
21 affidavit, which under other circumstances is provided  
22 for under current law.

23 A lot of these older voters are well  
24 known to people at their polling place. There's no  
25 need to impose these additional requirements. I would

1 find it highly dubious if I were to hear that there is  
2 any evidence or any record that older voters in  
3 particular pose a problem of fraud, that there's any  
4 worry that people 50 -- age 50 and older are the ones  
5 who have been identified as posing a risk of illegal  
6 voting activities.

7 What we need to do is to reach out, take  
8 advantage of the fact that these mature voters are  
9 very committed to participating and yet face a variety  
10 of challenges over time as they age that makes it more  
11 difficult for them to participate. This law raises  
12 barriers where there need be no such barrier.

13 SEN. URESTI: And, Mr. Kohrman, by  
14 placing those additional barriers through this bill on  
15 our seniors, do you -- is it your opinion that there  
16 will be some seniors that may not be able to vote come  
17 election day?

18 MR. KOHRMAN: Well, it's interesting.  
19 We've heard a lot of back and forth about what  
20 aggregate data shows. You know, a state -- a state  
21 shows big increases in turnout, and some people think  
22 they know exactly what the sole cause of that is, and  
23 supposedly it's photo ID.

24 I think -- and this is by way of  
25 answering your question. I think what we -- what



1 we -- what's most important here is what we don't see  
2 in the numbers. You can't measure the effect on  
3 people who are deterred from voting particularly when  
4 their numbers are swamped by turnout increases that  
5 result from a variety of causes. And what we fear is  
6 that lots of older voters -- and remember older voters  
7 are going to be a growing population. So to some  
8 degree if you just have a gradual growth in the  
9 turnout of older voters, that's a problem because  
10 that -- this should be a very significant growth trend  
11 as the population ages.

12 So what we're concerned about is that  
13 people will -- whether they're in their 50s and have  
14 disabilities, whether they're in their 40s, for that  
15 matter, but certainly greater numbers in their 60s and  
16 70s who are very avid voters, you know, voting for  
17 some of our seniors is the highlight of the year or a  
18 highlight of their life. It shows that they are still  
19 active, they're still engaged, they're still  
20 contributing to society. And what we fear is that if  
21 the impediments grow and become more diverse, they're  
22 just not going to show up. And so what is important  
23 is what we won't see.

24 And again, when the numbers are growing  
25 in terms of older voters, what you'll see is an

1 increase. And so people will say, "Well, older voters  
2 are growing in greater numbers, so there's no  
3 problem," and we think that's just a very  
4 short-sighted and narrow view that isn't called for.

5 SEN. URESTI: That's all the questions I  
6 have, and thank you, Mr. Kohrman. Thank you,  
7 Mr. Chairman.

8 MR. KOHRMAN: Thank you.

9 SEN. DUNCAN: The Chair recognizes  
10 Sen. Ogden.

11 SEN. OGDEN: Mr. Kohrman, I represent a  
12 lot of people in the AARP, and I wonder --

13 MR. KOHRMAN: Glad to hear that.

14 SEN. OGDEN: I wonder how you purport to  
15 represent them. How does the AARP, when you talk on  
16 behalf of the AARP, come to the position that you have  
17 espoused?

18 MR. KOHRMAN: Well, you may know, you  
19 may be surprised, I don't know. We spend a great deal  
20 of time and effort surveying our membership. I would  
21 venture to say more so than any membership  
22 organization in the United States we allocate more  
23 resources.

24 SEN. OGDEN: So you surveyed your  
25 membership on this state law? Did you survey the

1 Texas membership, or did you just survey the  
2 membership of the Continental United States? What  
3 membership did you survey?

4 MR. KOHRMAN: Well, now you're -- now  
5 you're taking what is a huge allocation of resources  
6 suggesting it should be even probably more than anyone  
7 would suggest reasonable. No, Senator, we don't -- we  
8 do not every year survey nationally and statewide --

9 SEN. OGDEN: All right. So then --

10 MR. KOHRMAN: -- on every proposal, but  
11 we have surveyed on the specific issue of photo ID.  
12 I'm sorry. I'm not trying to filibuster here. I just  
13 want to answer on photo ID, but also more generally on  
14 government integrity.

15 SEN. OGDEN: All right. So what was the  
16 result of your survey on the Texas voter  
17 identification bill?

18 MR. KOHRMAN: Well, we haven't surveyed  
19 on the Texas bill because, of course, I don't think  
20 it's been out there very long, but we have the Georgia  
21 law, we have the Arizona law. And frankly, Senator,  
22 there is a commonality to a lot of these laws, and  
23 that's what we built on.

24 SEN. OGDEN: Okay. So what was the  
25 result of your survey amongst Texans who are members

1 of the AARP who you stand up here purporting to  
2 represent? What is their opinion on the photo ID  
3 bill? How do you know and how do you get -- how does  
4 your organization determine that you have the right to  
5 stand up and speak for them, some of whom are on this  
6 floor right now and I think have absolutely no idea  
7 that the AARP has the position that you've espoused?

8 MR. KOHRMAN: Well, you know, Senator,  
9 we have an even more quick turnaround accountability  
10 system than even elected representatives who stand for  
11 election every two or four or six years, which is that  
12 our members can fire us at any time, and so --

13 SEN. OGDEN: Okay. So would it be  
14 correct to say that there is nothing specific in your  
15 organization rules that sets out a specific case that  
16 this is the position of the AARP, and it's based on a  
17 survey where the majority of the members or it's based  
18 on the majority of members expressing their opinion to  
19 you and you're just relaying what the majority told  
20 you?

21 MR. KOHRMAN: We have a several hundred  
22 page policy book.

23 SEN. OGDEN: Okay.

24 MR. KOHRMAN: And I quoted to you the  
25 two fundamental propositions in that book about

1 election restrictions, and they are that voting should  
2 be fair, easy and accessible. And that in regard to  
3 the -- I'm sorry. The second one is in regard to  
4 issues of fraud that it's an important priority, but  
5 never should be stressed to the exclusion of the  
6 principle of expanding access to the ballot.

7 SEN. OGDEN: Okay. I understand that  
8 general statement, but I'm going to say that the many  
9 thousand people in my district who are members of the  
10 AARP, I believe that they do not support this  
11 position, and I believe that you do not have any  
12 evidence to counter my statement.

13 MR. KOHRMAN: Well, we also have a  
14 process that is a grassroots process.

15 SEN. OGDEN: Okay.

16 MR. KOHRMAN: Every year we go state by  
17 state, we go policy by policy and we go soup to nuts  
18 ground up, and all of our policies are subject to  
19 review, analysis by all of our members.

20 SEN. OGDEN: All right.

21 MR. KOHRMAN: And, Senator, I have had  
22 to answer innumerable criticisms, complaints and  
23 questions from individual members over the seven years  
24 I've been with the organization about sentences,  
25 words, paragraphs in that policy book.

1                   SEN. OGDEN: Okay. Mr. Kohrman, I  
2 understand and think I made my point, and I hope I've  
3 given you a fair opportunity to respond.

4                   MR. KOHRMAN: No, no, I --

5                   SEN. OGDEN: Let me ask, how do you know  
6 who your members are?

7                   MR. KOHRMAN: Well, I'm not quite sure.  
8 I see someone holding up a card up in the gallery, so  
9 I guess that's one way.

10                  SEN. OGDEN: How do you --

11                  MR. KOHRMAN: I'm not sure I get your  
12 drift. I'm not trying to be evasive.

13                  SEN. OGDEN: How do you sign up for the  
14 AARP? How do you even know who is eligible to be in  
15 the AARP?

16                  MR. KOHRMAN: Well, you know, that's an  
17 interesting mystery that the membership people handle,  
18 and I'm not trying to be cute. I don't know. I  
19 assume we gather all kinds of information about  
20 individuals through various mailing lists and send out  
21 lots and lots of direct mail. But we know who our  
22 members are because we spend a lot of effort keeping  
23 track of them, and we know where they live and what  
24 their interests are.

25                  SEN. OGDEN: Is it possible that -- is

1 it possible that you use forms of identification to  
2 identify your members, and is it possible that you  
3 send out membership cards that identify your members?

4 MR. KOHRMAN: Sure, sure.

5 SEN. OGDEN: And do you have a  
6 reasonable level of confidence that these people are  
7 who they say they are?

8 MR. KOHRMAN: Sure.

9 SEN. OGDEN: Okay. So --

10 MR. KOHRMAN: Can I just add there,  
11 Senator? We have no reason to believe that people  
12 would impersonate someone else in taking an AARP  
13 membership, and I think that principle is the same one  
14 applicable here.

15 SEN. OGDEN: I understand that, but what  
16 I'm saying is you know who your members are because  
17 you require some form of identification in order to  
18 sign them up.

19 MR. KOHRMAN: No, we don't.

20 SEN. OGDEN: That identification is  
21 either through some sort of list that you've obtained  
22 identifying people who are over a certain age; that  
23 identification is associated with a form they fill out  
24 to sign; that identification is associated with a  
25 membership card; that identification is associated

1 with maybe some commercial transaction; I mean,  
2 identification is involved throughout this process.  
3 So my question is, can you think of a single member in  
4 the AARP that could not meet the requirements in this  
5 bill, a single one? And tell me who that is.

6 MR. KOHRMAN: Well, I would point --

7 SEN. OGDEN: Give us one person who  
8 could not -- could not meet the requirements of this  
9 bill if they are members of the AARP and have an  
10 identification card that says "I'm a card-carrying  
11 member of the AARP." Give me one person who couldn't  
12 meet the requirements in this bill.

13 MR. KOHRMAN: Well, I tell you that I  
14 think that's a good question, and I regret not  
15 checking all the people mentioned in my testimony so  
16 that I could answer that question.

17 SEN. OGDEN: Well, I'm going to suggest  
18 to you that there's not a single member in the AARP  
19 who could not meet the requirements in this bill.

20 MR. KOHRMAN: Well, Senator, that may be  
21 right, but I doubt it, and I think you have no basis  
22 for that statement.

23 SEN. OGDEN: Yes, I do.

24 MR. KOHRMAN: And if there is a basis  
25 for that statement, it's that frankly our members are



1 among the most energetic, active seniors there are in  
2 the country. They are also more on average well off  
3 than your typical senior. They're probably more  
4 healthy than your typical senior, and they don't have  
5 a lot of the challenges.

6 One of the things that AARP has done in  
7 the last two years is to put on our priority list in  
8 the AARP Foundation where all the legal advocates are  
9 like me, a new focus on low-income seniors, and the  
10 focus is on people who we're not likely to get as  
11 members because for them maybe even \$12 a year is more  
12 than they want to contribute.

13 SEN. OGDEN: Well, okay, and I  
14 understand that we're talking about all the voters,  
15 but as a representative of the AARP, I assume you're  
16 speaking on behalf of your membership using a very  
17 vague standard of what it is that they support and not  
18 support, and that there is no evidence in your  
19 testimony or in my questions to suggest that there's a  
20 single member in the AARP who couldn't meet the  
21 requirements of this bill. And so I don't have  
22 anything else to add.

23 MR. KOHRMAN: Well, I'm not sure what  
24 the point is, Senator. It seems to me --

25 SEN. OGDEN: The point is that this

1 testimony is -- well, I don't have any more to add.

2 MR. KOHRMAN: Well, let me just respond.  
3 It seems to me when you come to fundamental rights,  
4 the burden is on the proponents of this bill to  
5 justify it. If we were talking about regulating  
6 advertising or some other interest that is not  
7 fundamental to what it is to be an American, I would  
8 take on the burden and acknowledge that it's, you  
9 know, my burden to perhaps justify in excruciating  
10 detail the names and addresses of people who couldn't  
11 be covered by your bill. But it seems to me the shoe  
12 is on the other foot when it comes to voting.

13 And to say that when there is no  
14 evidence of harm, but it is speculative harm that  
15 frankly -- another thing that concerns us, Senator, is  
16 that proponents of these bills are creating their own  
17 problem to be solved by complaining and suggesting to  
18 our members and other seniors and voters all over the  
19 country that there is a fraud problem that cannot be  
20 demonstrated, that then needs to be solved by forcing  
21 voters to jump through additional hoops. That seems  
22 to us is an unnecessary --

23 SEN. OGDEN: Okay.

24 MR. KOHRMAN: -- an unnecessary and  
25 unfortunate misallocation of time.

1                   SEN. OGDEN: All right. Mr. Kohrman,  
2 and I would suggest to you that the hoops that you've  
3 got to jump through to become a member of the AARP are  
4 more onerous than the hoops you've got to jump through  
5 in order to vote under this bill. And I would also  
6 suggest to you that you're perfectly within your  
7 rights to testify as an individual, but I think your  
8 testimony representing the AARP lacks merit and  
9 substance.

10                  MR. KOHRMAN: Well, we're very  
11 comfortable with our position on this bill, and we  
12 feel very confident that our members believe in an  
13 expansion of political participation rather than  
14 measures likely to discourage it and reduce it.

15                  SEN. DUNCAN: Thank you, Sen. Ogden.  
16 Senator Patrick?

17                  SEN. PATRICK: Thank you, Mr. Chairman.  
18 I've heard a number of witnesses continue to say  
19 something that I believe our last witness shows it is  
20 not correct. You said there's no evidence of  
21 fraudulent voting, and our last witness from Harris  
22 County clearly showed there was fraudulent voting  
23 there. So would you like to correct that statement?

24                  MR. KOHRMAN: On the contrary, he showed  
25 no evidence whatsoever of fraudulent voting. What he

1 showed was evidence of fraudulent registrations, and  
2 those are two very different things.

3 Moreover, what's so stunning about this  
4 whole debate is that there are innumerable forms of  
5 electoral malfeasants, but this kind of law gets at  
6 none of those. The only thing it does, as Ms. Wang  
7 said at the very beginning of this long debate, the  
8 only thing that this bill can prevent is in-person  
9 impersonation, and the notion that people --

10 SEN. PATRICK: Let me -- excuse me. I  
11 didn't ask that question. The question was our last  
12 witness clearly indicated, proved that people voted on  
13 behalf of dead people. So don't sit there and say  
14 there's been no evidence.

15 Secondly, in terms of AARP, did I  
16 clearly hear you say to Sen. Ogden that AARP members  
17 are more affluent, more well informed, very active,  
18 and basically what I heard you say was AARP members  
19 wouldn't be impacted by this bill. Is that correct?

20 MR. KOHRMAN: Well, let me answer --

21 SEN. PATRICK: That's a yes or no. Is  
22 that correct?

23 MR. KOHRMAN: Well, you asked me two  
24 questions.

25 SEN. PATRICK: I'm asking you one

1 question now. Based on your testimony previously --

2 MR. KOHRMAN: Uh-huh.

3 SEN. PATRICK: -- you said that your  
4 concern was for those members that may not -- or those  
5 people who may not be -- can't afford \$12 a month to  
6 be in AARP, that AARP members wouldn't be impacted.  
7 So is your testimony that AARP members won't be  
8 impacted? That's what you said a moment ago.

9 MR. KOHRMAN: They will be impacted  
10 in -- to a lesser degree on average than seniors  
11 generally and certainly --

12 SEN. PATRICK: How much is lesser,  
13 5 percent?

14 MR. KOHRMAN: -- low-income seniors.

15 SEN. PATRICK: 5 percent? What's  
16 lesser, 99, 1 percent?

17 MR. KOHRMAN: There's no disputing that  
18 this is a small percentage of the overall electorate,  
19 and the question is whether the proponents of this  
20 bill care about the absolute number of people.

21 SEN. PATRICK: And do you have any proof  
22 of even a lesser percent? Can you present any  
23 evidence, solid evidence, that any member of AARP will  
24 be impacted by this bill? Do you have any evidence?

25 MR. KOHRMAN: Our surveys shows that

1 small percentages consistent with all the surveys --

2 SEN. PATRICK: Is there a name?

3 MR. KOHRMAN: -- have concerns that they  
4 would not be able to provide --

5 SEN. PATRICK: Is there a name?

6 MR. KOHRMAN: -- the kind of ID that is  
7 required in these laws.

8 SEN. PATRICK: So you don't have any  
9 names. You just have this kind of general small  
10 percentage.

11 So let me ask you this question: Have  
12 you done a survey of Senate District 7 in Harris  
13 County?

14 MR. KOHRMAN: Can I answer? Because my  
15 answer was just given to me when it was not the answer  
16 I would have given.

17 SEN. PATRICK: Let me -- let me ask  
18 another question. Did you survey any one in Senate  
19 District 7 in Harris County who is a member of AARP?

20 MR. KOHRMAN: Not as far as I know.

21 SEN. PATRICK: Okay. Would it shock you  
22 if I told you that the majority of seniors in Senate  
23 District 7 support voter ID?

24 MR. KOHRMAN: I would challenge you to  
25 demonstrate that you've surveyed them and know who

1 those members are.

2 SEN. PATRICK: Oh, I can -- oh, I can  
3 assure you I meet with hundreds, thousands, I talk  
4 with them, I know my district, I'm very well connected  
5 to the people in my district. And the seniors of my  
6 district, many who are members of AARP, support this  
7 bill. Thank you.

8 MR. KOHRMAN: Okay. All I can --

9 SEN. PATRICK: I have no further  
10 questions. Thank you.

11 SEN. DUNCAN: Sen. Williams, you're  
12 recognized.

13 SEN. WILLIAMS: Thank you, Mr. Chairman.  
14 You know, I've just -- during this discussion I've  
15 just been on your Website here, and I've gone to the  
16 policy and research, and I went to election issues and  
17 scanned every article that you have on your Website  
18 here under that category, and there is not a single  
19 article in here about photo ID voting. And so I put  
20 that under the search, policy and research, and I came  
21 up with one article that says "the Supreme Court  
22 upholds the voter -- voting ID laws. The U.S. Supreme  
23 Court upheld an Indiana law despite acknowledging it  
24 burdens poor people." I mean, you've got one article  
25 on here that you have to really go to a lot of

1 trouble.

2 I think it's so disingenuous for you to  
3 come here and say that you represent all the members  
4 of AARP when I have done surveys in my district -- you  
5 know, I've got 750,000 constituents just like every  
6 other member of the Senate does here -- and I find  
7 consistently across all age brackets and across all  
8 ethnic lines, they all support this measure. I  
9 just -- I don't see how you can sit here and assert  
10 this and offer no statistical proof or anything in  
11 writing that you've ever surveyed any of our  
12 districts. This is ridiculous. You are a political  
13 hack coming in here and asserting this stuff that you  
14 don't have any basis for whatsoever.

15 MR. KOHRMAN: Senator, I'd be happy to  
16 help you with your Internet search skills any time and  
17 provide you with a lengthy list of the Web links to  
18 the various articles on the various cases, but --

19 SEN. WILLIAMS: You know, I've just  
20 searched your Website.

21 MR. KOHRMAN: I understand, Senator, and  
22 obviously you have some limitations in your search  
23 skills because we have -- I've told you the number of  
24 cases on this issue that we have, and you haven't  
25 found them.



1                   SEN. DUNCAN: Sir, I'm sorry, I think  
2 the question --

3                   MR. KOHRMAN: Okay.

4                   SEN. DUNCAN: -- there is no other  
5 members queued up, so you are excused. Thank you for  
6 your testimony.

7                   MR. KOHRMAN: Thank you.

8                   TESTIMONY BY COBY SHORTER

9                   SEN. DUNCAN: The Chair calls Coby  
10 Shorter. Mr. Shorter, I think, has been listed as a  
11 resource witness.

12                  MR. KOHRMAN: Actually, Mr. Chairman --  
13 Mr. Chairman?

14                  SEN. DUNCAN: Sir, you're not recognized  
15 at this point, at this time.

16                  MR. KOHRMAN: I've been -- I've been  
17 criticized without a chance to respond by three  
18 Senators.

19                  SEN. DUNCAN: You're out of order;  
20 you're out of order. You'll have to leave.

21                  MR. KOHRMAN: Okay.

22                  SEN. DUNCAN: Thank you.

23                  MR. KOHRMAN: I was just going to  
24 request a chance to respond in writing.

25                  SEN. DUNCAN: Mr. Shorter, you'll need

1 to state your name and the office that you're with,  
2 and you'll have ten minutes as the other witnesses,  
3 and then you'll be subject to questions at that time.  
4 Go ahead. Do you have any written materials?

5 MR. SHORTER: No, sir.

6 SEN. DUNCAN: Okay.

7 MR. SHORTER: Thank you, Mr. Chairman  
8 and Senators. I am Coby Shorter, the Deputy Secretary  
9 of State for the State of Texas, and it's a pleasure  
10 to be here with you this morning.

11 First of all, I just want to say on  
12 behalf of Secretary Andrade, she sends her regrets for  
13 not being here, and I have been invited here to be a  
14 resource to you on some of the issues that you are  
15 debating, and hopefully the information that I am able  
16 to provide through answering your questions will help  
17 you in your deliberations.

18 I only say this: It is our goal as the  
19 Secretary of State's Office, the chief elections  
20 office, to make sure that every election in Texas is  
21 fair, every election in Texas is credible and  
22 accessible to all the Texas voters. And our office  
23 recognizes the importance of protecting the integrity  
24 of elections and ensuring that all eligible Texans  
25 have the opportunity to participate in the Democratic

1 process.

2 So with that said, please know that  
3 whatever deliberations and whatever bills you pass  
4 related to elections, we look forward to working with  
5 you and helping you to -- helping you in terms of  
6 implementing the bills that you pass.

7 With that, I would ask that since I am a  
8 resource, that I'm here to answer questions. We also  
9 have, Mr. Chairman, our General Counsel John Sepehri  
10 here to answer questions as well, but we are open now  
11 to any questions we may -- you may have for us today,  
12 this morning.

13 **QUESTIONS FROM SENATE FLOOR**

14 SEN. DUNCAN: The Chair recognizes  
15 Sen. Fraser.

16 SEN. FRASER: Deputy Secretary Shorter,  
17 thank you for being here. We -- it doesn't escape us  
18 that you've been sitting over here since ten o'clock  
19 this morning being available to this body. And as  
20 someone that serves the state, we appreciate you being  
21 here.

22 The questions that I have today for you  
23 are -- I think I want some clarification, making sure  
24 that the bill that I'm laying out that I am  
25 understanding correctly the interpretation of someone

1 that fills out an application, sends it in, receives a  
2 registration card and then takes that registration  
3 card and attempts to vote with that.

4 MR. SHORTER: Yes, sir.

5 SEN. FRASER: And I guess the first  
6 question I would have is the election code is under  
7 Chapter 63 and, in fact, the start of that is  
8 Section 63.001, the Regular Procedure for Accepting a  
9 Voter. Do you happen to have that --

10 MR. SHORTER: Yes, sir, I do.

11 SEN. FRASER: -- that law in front of  
12 you? And I would ask you -- if possible I'd like to  
13 walk through and make sure I understand the Texas law  
14 and what provides for the ability for someone to vote.

15 Here in my hand I have the voter  
16 registration card that I believe that is issued. Is  
17 that correct? It is issued to a voter. It looks like  
18 it is mailed out, and this would be the card that I  
19 would use when I would walk into the --

20 MR. SHORTER: Senator, that does appear  
21 to be our voter registration card.

22 SEN. FRASER: And it looks like -- it  
23 says "Except as otherwise provided, acceptance of  
24 voters shall be conducted as provided" under this  
25 section. "(b) On offering to vote, a voter must

1 present the voter's voter registration certificate to  
2 an election officer at the polling place." So it  
3 appears to me that if I walk in a polling place and I  
4 take this voting card and I show it to the person at  
5 the polling place, the first thing they're going to do  
6 is accept this card that I'm offering.

7 MR. SHORTER: That is correct, sir.

8 SEN. FRASER: Okay. "(c) On  
9 presentation of a registration certificate, an  
10 election officer shall determine whether the voter's  
11 name is on the registration certificate is on the list  
12 of registered voters for the precinct." So I'm  
13 assuming that after I hand him the card, if I remember  
14 correctly, they've got a list in front them, they look  
15 and find my name on the list, they look at my address  
16 and they determine am I voting in the right precinct.  
17 I think -- is that what they're looking for?

18 MR. SHORTER: Yes, sir.

19 SEN. FRASER: Okay. "(d) If the voter's  
20 name on the precinct list of registered voters, the  
21 voter shall be accepted for voting."

22 MR. SHORTER: That is correct.

23 SEN. FRASER: Now, is that what happens?

24 MR. SHORTER: Yes, sir, that is the --  
25 what it's going to say on that.

1                   SEN. FRASER: Okay. I want to clarify.  
2   On this card, there's several other things on the  
3   card. One of them is, it has date of birth. Now, is  
4   the person that I'm giving this to looking at that  
5   date of birth, and has it been reflected in state law  
6   that that's something they check?

7                   MR. SHORTER: According to state law  
8   right now, as it is written now, date of birth is not  
9   something that is checked.

10                  SEN. FRASER: On this card, it has an  
11   area for my sex. We've had a lot of fun today with  
12   the sex change argument, but on the card it says that  
13   there is a registration for someone's sex. My card  
14   says "male," and I put it there. Is that something  
15   when I hand this card to the registration person that  
16   they would be verifying on the card?

17                  MR. SHORTER: They would not be  
18   verifying it under current law.

19                  SEN. FRASER: Okay. So let me -- let me  
20   make sure I understand the way this works. I have a  
21   card in my possession. I walk in and I give this to  
22   the person. They look at the list, they determine I'm  
23   in the right precinct. If I'm on the list and I'm in  
24   the right precinct, they hand me my card back, and  
25   they hand me a ballot, and I go over and vote. Is

1 that correct?

2 MR. SHORTER: Yes, sir.

3 SEN. FRASER: Okay. Well, I'm a little  
4 confused about how -- what could happen because let me  
5 continue this questioning here. I live in Horseshoe  
6 Bay, Texas. It is a small community, a retirement  
7 community, which by the way, most of them are AARP  
8 members. And the retirement people there that still  
9 are going to vote, when they walk in, the people in  
10 the polling place, they know me as their Senator. And  
11 if I walked in and I brought my voting card and I put  
12 it in, they'd say "Senator, it's good to have you  
13 today," and I would register and I would vote and then  
14 I would walk back out to my car.

15 But what would happen after I voted  
16 that -- in my car I had my brother Steve's voter  
17 registration card, and I walked back into that polling  
18 place that I just left and I laid Steve Fraser's  
19 voting card down and said "I'm here to vote." Now,  
20 the registrar probably would say "Well, Senator, you  
21 were just here, and you just voted." And I said "No,  
22 I'm Steve Fraser. I'm his twin brother. I'd like to  
23 vote." What authorization under state law does that  
24 polling place person have to tell me that I am not  
25 authorized to vote?

1 MR. SHORTER: Under current state law,  
2 there is no authorization to prevent that polling  
3 person from --

4 SEN. FRASER: So if I present my  
5 brother's card and even though they know or they  
6 suspect -- greatly suspect that I am not Steve Fraser,  
7 do they have the authorization under state law to stop  
8 me from voting?

9 MR. SHORTER: I don't think -- based on  
10 my understanding of state law and based on my  
11 consultation with our staff, they don't have the  
12 authorization to stop you.

13 SEN. FRASER: Okay. Let me -- let me  
14 carry it a step further. Let's say that I'm not in  
15 Horseshoe Bay. I'm in Houston, Texas. And in  
16 Houston, Texas if I was voting, probably they wouldn't  
17 have any idea who I was. And I walked in the voting  
18 booth and I didn't have my card or my brother's card,  
19 I had my wife Linda's card, and I went in to vote.  
20 And my name -- Linda Fraser's name was on the list in  
21 the precinct. They would check and see if her name  
22 was there, and they would check the address, and I'm  
23 in the right place, would they hand me a ballot and  
24 allow me to vote? Is there anything under state law  
25 that they would check the person verifying the -- you



1 know, that I'm not Linda Fraser in that? Is there  
2 anything under state law that would cause them or  
3 allow them not to allow me to vote?

4 MR. SHORTER: Senator, under these  
5 provisions of the law as they are, there are no  
6 provisions that would prevent that.

7 SEN. FRASER: Okay. Let's carry it a  
8 step further. There was a case that was represented  
9 to me this week -- there have been a lot of these now  
10 that we've been working on this -- this happened in  
11 Plano. A poll worker in Plano had a lady came in,  
12 bright red hair, big blue hat, feathers on the hat,  
13 one of those people you would remember when they came  
14 in. She voted. An hour later she came back in with  
15 somebody else's registration card, went down to the  
16 next poll person and was registering to vote.

17 The person she just voted with went to  
18 the election judge and said "This person was just  
19 here. They just voted. She's trying to vote again,"  
20 and the election judge told them "I'm sorry. We have  
21 nothing under state law to stop them. You have to  
22 allow them to vote." Now, is that -- under current  
23 law could that have happened?

24 MR. SHORTER: Under current law as it is  
25 written, that could have happened, yes, sir.

1                   SEN. FRASER: Okay. Let's carry it a  
2 step further. Let's assume there's an unscrupulous  
3 person that has the address of someone that they know  
4 was a registered voter and that person has passed  
5 away. Let me back up and ask the question.

6                   My understanding is that when someone  
7 dies that your office requests death records, and that  
8 you now have the ability to try to take people off the  
9 roll. Is that correct?

10                  MR. SHORTER: Well, Senator, what  
11 happens on a weekly basis, the Bureau of Vital  
12 Statistics submits to our office their records on  
13 deceased individuals, and we forward that information  
14 to the counties for that person to be taken off the  
15 roll.

16                  SEN. FRASER: How long does it take for  
17 that data to -- to have the person deceased till you  
18 get it and you get them taken off, what is the time  
19 lag?

20                  MR. SHORTER: Senator, I don't know the  
21 exact timeline that it takes, but the challenge that  
22 we sometimes have is that the information that is  
23 forwarded to our office from vital statistics, there's  
24 a lag between the time that we get it and the time the  
25 individual sometimes actually has expired.

1                   SEN. FRASER: I've been told it's six  
2 months. Is that the average time that it takes to  
3 remove them off the roll?

4                   MR. SHORTER: We do have instances of  
5 knowing it has taken six months.

6                   SEN. FRASER: Okay. If it took six  
7 months and if someone died and if someone sent in a  
8 letter of a change of address and said that person  
9 just died, asked for a new registration card to be  
10 sent to X address and they did that with every one  
11 that died during that period, and there were as many  
12 as 30 or 40 or 50 of these people and the same  
13 address -- request change that went to the same  
14 address, do you have the ability or does the County  
15 Clerk have the ability to catch that under our current  
16 system?

17                  MR. SHORTER: If they all went to the  
18 same address?

19                  SEN. FRASER: If someone sent in a  
20 change of address --

21                  MR. SHORTER: Yes, sir.

22                  SEN. FRASER: -- of a valid voter and  
23 said "Send me their registration card and send it to  
24 this address" --

25                  MR. SHORTER: Yes, sir.

1                   SEN. FRASER: -- and whether it was one  
2 or two or ten or thirty or fifty, that they change  
3 that address, if someone sends you in a change of  
4 address, would you likely send it to that address?

5                   MR. SHORTER: Yes, sir, we would.

6                   SEN. FRASER: So it's possible that  
7 someone could collect, could harvest multiple cards at  
8 this address. Hypothetically is it possible they  
9 could hand them out to random people that didn't  
10 belong to the card, and that person -- the random  
11 person could walk in with the fake card and give it to  
12 the person at the polling place and vote that card?

13                  MR. SHORTER: Hypothetically, yes,  
14 Senator.

15                  SEN. FRASER: Well, hypothetically if it  
16 could happen and someone could do it, we have to  
17 assume that somebody has thought about that, and that  
18 some of these people that we've heard on these stories  
19 of people that were dead that voted multiple times  
20 possibly that could have been what happened. Is that  
21 correct?

22                  MR. SHORTER: Yes, sir.

23                  SEN. FRASER: Okay. If Senate Bill 362  
24 was in place and that person that stole that  
25 identification or stole the card or the Troy Fraser

1 that was voting Steve Fraser's card, if they had to  
2 come in and show either a photo ID proving who they  
3 were or they had other means of identification that  
4 they would have to show, would that not give us a lot  
5 better chance of identifying that that person is  
6 fraudulently voting?

7 MR. SHORTER: Yes, sir, if you could  
8 verify that.

9 SEN. FRASER: Okay. Well, let's change  
10 this for a second. I have the -- your voter  
11 registration card here in front of me. I know it  
12 looks like it's got a lot of spaces for things to fill  
13 out, but down at the bottom it's got a place to fill  
14 in your driver's license number, and there's another  
15 place that says your social security card number.

16 MR. SHORTER: Yes, sir.

17 SEN. FRASER: The data that I received  
18 from you it looked like that because of motor voter  
19 we're receiving about -- I think the number is  
20 somewhere in the high 80s. You know, 75 to 80 percent  
21 of people right now are using their driver's license  
22 number. There is a smaller number, you know, 10,  
23 15 percent uses a social security number, but there  
24 were a number of people -- I think there were 3,700  
25 people in Texas last year -- 37,000 people in Texas

1 last year that used neither. They said "I don't have  
2 a driver's license. I don't have a social security  
3 card," and they turned this in.

4 Now, if they turn this in to the  
5 Secretary of State or to the registrar in Houston, the  
6 guy that was just up, once they do that, would this be  
7 processed, and will they be issued -- even though they  
8 have no forms of identification, they don't give you a  
9 driver's license number or a social security card, all  
10 they gave you was just a blank card, will they be  
11 issued a voter registration card?

12 MR. SHORTER: Senator, they will be  
13 issued a voter registration card if they sign the  
14 affirmation statement at the bottom.

15 SEN. FRASER: If they sign the bottom  
16 saying "I'm who I say I am" on the bottom, they send  
17 this in, they're going to get a registration card?

18 MR. SHORTER: That is correct.

19 SEN. FRASER: Okay. But I also  
20 understand that when they go to vote there's going to  
21 be a flag on that, and when they come in they've got  
22 to show something to prove that they are who just  
23 signed up. Is that correct?

24 MR. SHORTER: Yes, sir, they will have  
25 to --

1                   SEN. FRASER: Okay. But you also -- if  
2 I understood the person from Houston, is that when  
3 they fill this out, they mail them a notice that  
4 they're going to have to provide some kind of  
5 identification. And if they took that letter that  
6 they just mailed them in and said "Here is my proof of  
7 identification. They just mailed this to me,"  
8 basically they could game the system by showing no  
9 identification, mail it to the address, take that as  
10 their form of identification, and they could use --  
11 and let me give you kind of a ridiculous case. But if  
12 I filled this out as Mickey Mouse and it was 103  
13 Lighthouse Drive and I sent it in, would you send me a  
14 card for Mickey Mouse?

15                   MR. SHORTER: You would get a card,  
16 Senator, if you have a -- have signed the affirmation.

17                   SEN. FRASER: If I sign the bottom of  
18 it, you're going to send me a card for Mickey Mouse.  
19 Okay. Now I've got a registration card that says  
20 Mickey Mouse. I'm going to walk in to my precinct  
21 with that card, and you've also sent me a notice  
22 saying I've got to show other identification. I take  
23 the letter you just mailed me, walk in to my polling  
24 place, I lay down my Mickey Mouse card, I also lay  
25 down the letter you just mailed me, if I give them

1 that, are they going to allow me to vote?

2 MR. SHORTER: If you're using that  
3 letter -- if we're talking about the letter from the  
4 government agency, it will be counted as a form of  
5 identification.

6 SEN. FRASER: Okay. So if someone is  
7 unscrupulous and they know how to do this, let's say  
8 some random group like ACORN that decided they wanted  
9 to try to use something to register people to try to  
10 get a card and to game the system and then to go in  
11 and vote and falsify that vote by not giving the  
12 proper identification, the scenario that I just laid  
13 out, is that possible under current law?

14 MR. SHORTER: It is possible, Senator.

15 SEN. FRASER: Okay. In the this last  
16 election cycle -- and I'm sorry. I'm not going to ask  
17 you that question there. We should have asked the  
18 registrar because of the people that voted late in  
19 this last election cycle I have been told that they  
20 suspected thousands and thousands of that scenario  
21 that I just suggested.

22 But if I took that Mickey Mouse voter ID  
23 and I laid it in front of the person, would the person  
24 say "Thank you, Mr. Mouse. Here is your card," and  
25 they would allow me to vote? Is that not correct?



1 MR. SHORTER: Theoretically, Senator,  
2 that -- that could happen.

3 SEN. FRASER: Okay. So I guess what I'm  
4 trying to establish with you is that it sounds like  
5 today if I want to game the system and I want to  
6 cheat, it's very difficult for either the Secretary of  
7 the State or that election clerk or that election  
8 judge to identify that I'm cheating and know for sure.  
9 Is that correct? Especially if I'm voting in Houston  
10 or Dallas or someplace where they have no reason to  
11 know who I am, is it difficult -- would you say that  
12 it is difficult for them to identify, to determine for  
13 sure, that that person representing themselves as Mickey  
14 Mouse really is Mickey Mouse?

15 MR. SHORTER: Senator, I would say that  
16 there may be -- they may have an opportunity to  
17 identify it. However, to do something about it based  
18 on what is currently in statute would be difficult.

19 SEN. FRASER: Okay. Well, actually that  
20 was the next question. It's difficult to identify,  
21 but it sounds like it's even more difficult to proceed  
22 to prosecute because if you can't identify it, you  
23 don't have the authority to ask them questions to  
24 prove who they are. And even if you think you know  
25 that it's the wrong person, if you accuse them of

1 doing that, there's really nothing under current law  
2 to allow you to do that, is there?

3 MR. SHORTER: Well, they're a registrar  
4 who has some concerns, has reasonable concerns, does  
5 have the capacity to challenge, but there's not  
6 provisions for once those challenges are made for you  
7 to do much with it.

8 SEN. FRASER: Okay. Under current law,  
9 as we say here, even if there's a challenge -- and  
10 let's say that -- let's go back to the Horseshoe  
11 Bay -- let's go to the Horseshoe Bay example.

12 MR. SHORTER: Yes, sir.

13 SEN. FRASER: If I voted twice there,  
14 they'd know it was me and probably they would say it's  
15 a challenge, and they probably could call the D.A. and  
16 say "The Senator just voted twice. We need to check  
17 into it." But the question is, I just voted twice, I  
18 just placed two ballots, what would happen to those  
19 ballots? Would they be put in the pile to be counted?

20 MR. SHORTER: Yes.

21 SEN. FRASER: Okay. So I just voted  
22 illegally. You knew I voted illegally. You're going  
23 to report me to the D.A., but I just voted. And if  
24 that is a close election, that County Commissioner  
25 that I voted for, and they're going to be within one

1 or two votes, I just impacted an election by voting  
2 illegally.

3 MR. SHORTER: Would you allow me to  
4 defer to my general counsel on whether or not that  
5 actual vote would count twice?

6 SEN. FRASER: I'm sorry. I didn't say  
7 it was going to count twice. I voted twice. I'm  
8 saying I voted as Troy Fraser and I voted as Steve  
9 Fraser, and both of those votes I voted under current  
10 law. The vote, my understanding is, and I've asked  
11 the registrar of these counties what they would do, if  
12 someone comes and votes and they place a vote, they  
13 have to put it in the pile to count. But even if  
14 there's appeal, they could pursue it and possibly get  
15 an indictment. But I think what you're saying is if  
16 it's hard to catch them, it's even much harder to  
17 prosecute.

18 MR. SHORTER: And, Senator, on that --  
19 on that particular question, I think my best response  
20 to you is for you to allow me the opportunity to  
21 research that one and get back with you as soon as  
22 possible --

23 SEN. FRASER: Okay. Okay. That's good.

24 MR. SHORTER: -- because I'm really not  
25 clear on that one.

1                   SEN. FRASER: The other question I would  
2 ask you and that I want to clarify, if someone  
3 suspects the scenario that we just talked about where  
4 they suspect somebody has voted illegally, it got put  
5 in the pile to count and they think that they voted  
6 twice like the lady with the big hat, if that is  
7 referred to someone to check it out, if it happens in  
8 Dallas, probably that's going to go to the District  
9 Attorney, or they could send it to -- directly to the  
10 Attorney General, or it's possible it could be sent to  
11 you, but if they send it to you, aren't you going to  
12 refer it to the District Attorney and the AG? Is that  
13 correct?

14                   MR. SHORTER: If a complaint is sent to  
15 the Secretary of State's Office, our office looks at  
16 the complaint, and there's a general assumption among  
17 the staff and the Secretary of State's Office and that  
18 assumption is if the information that is being  
19 presented on that -- on that complaint is actually  
20 considered true, and if it's true we -- of course  
21 understand, Senator, our office does not do the  
22 investigation. But if the allegations as presented  
23 would present a crime under the elections code, our  
24 office would refer it to the Attorney General's  
25 Office.

1                   SEN. FRASER: Okay. And I guess the  
2 follow-up question to that is if it's hard to identify  
3 and it's hard to prosecute and there's two other  
4 sources, the assumption is that the number of these  
5 going to your office probably -- is it great? If  
6 they're having trouble identifying it and they're  
7 having trouble prosecuting it, do you --

8                   MR. SHORTER: Correct. Senator, the  
9 number -- in terms of -- I can give you some  
10 statistics. In terms of the Secretary of State's  
11 Office since September 1, 2007, there were 50 written  
12 complaints sent to our office, and those -- those  
13 were -- our office looked through those. We looked at  
14 them to see if there was merit. Actually related  
15 to -- complaints related to voter impersonation, we  
16 found about seven of those complaints. Two of them  
17 were actually referred, one was not referred, and one  
18 is pending. One is pending with our office now to be  
19 actually referred to the AG's Office.

20                  SEN. FRASER: Thank you, Mr. Shorter. I  
21 do appreciate the information.

22                  SEN. DUNCAN: Sen. Van de Putte or --  
23 Sen. Van de Putte? And the court reporter has been  
24 going for about almost two hours. If we could -- you  
25 take as long as you need, but I would propose that we

1 let her take a break in about ten minutes, if we  
2 could.

3 SEN. VAN de PUTTE: Thank you,  
4 Mr. Chairman, and thank you very much for being here  
5 particularly in the late -- excuse me -- the early  
6 hour that we're in now in the next day.

7 I wanted to ask a few of the questions  
8 earlier yesterday. In speaking to Sen. Fraser when he  
9 laid out the bill, I asked several questions at that  
10 time. He said that the Secretary of State's Office  
11 would be the most appropriate. So the questions that  
12 I'm asking you are actually the ones that Sen. Fraser  
13 had asked me to ask.

14 You. And please give our regards to my  
15 dear friend and fellow San Antonian Hope Andrade.

16 I wanted to ask you if you would just  
17 take a look at the bill, and hopefully you have a copy  
18 of that or your general counsel has that for you. On  
19 the first page in Section 15.005 --

20 MR. SHORTER: Uh-huh.

21 SEN. VAN de PUTTE: -- there's a  
22 timeline between the requirements when each voter  
23 registration certificate issued under Section 13.142  
24 or renewal registration certificate issued under  
25 Section 14.001. In the Senate Bill that is proposed,

1 we have to do a lot of changes to educate our election  
2 judges and our clerks. What happens in the timeframe  
3 between the people with current registrations that are  
4 caught between the renewal for purposes of education?

5 MR. SHORTER: For purposes of  
6 education of --

7 SEN. VAN de PUTTE: Yeah.

8 MR. SHORTER: -- of the new bill?

9 SEN. VAN de PUTTE: Yeah.

10 MR. SHORTER: Well, Senator, what we  
11 would do -- what our office is planning on doing for  
12 all elections-related bills, we're in the process  
13 right now of doing the long-term planning for voter  
14 education for our office. And voter education in our  
15 office deals with some specific things. Voter  
16 education in our office deals with we want -- we want  
17 to talk about where to vote, how to vote, what do you  
18 need to vote, what are the items that you need to  
19 vote, all the resources. So we're planning that now.

20 If this bill were passed or any other  
21 bill that you would pass related to changes in a  
22 requirement for voting, as we continue to develop our  
23 module for voter education, we would be able to put  
24 the requirements that this bill or any other bill has  
25 into our planning module for voter education that

1 we're currently developing.

2 SEN. VAN de PUTTE: Since the proposed  
3 regulations and rules would be greatly changed from  
4 the process that Texas voters have used in the past  
5 several years with the requirements of the voter  
6 certificate and a photo identification, how would the  
7 Secretary of State's Office propose to inform voters  
8 of these changes?

9 MR. SHORTER: Senator, we would inform  
10 through the existing process that we have, which is a  
11 pretty extensive process. For instance, during the  
12 last year on voter education, it was a \$3 million  
13 process that we undertook to inform voters of what's  
14 going to be going on in the election cycle that ended  
15 in November of 2008. We're doing that now.

16 It would mean that our office would have  
17 to make sure that all of the changes are implemented,  
18 and implementation would mean all notifications that  
19 would need to be made, we would have to get that done.  
20 All training for county Election Officials through our  
21 current -- through our current system of educating  
22 county workers, election workers, which we hold  
23 periodically through the year, we would implement or  
24 make sure that this new information is a part of that  
25 process. Poll worker training, which we're looking at



1 right now, we would also make sure that those things  
2 within the bill that actively affect poll workers,  
3 those changes will be put into what we're doing now or  
4 what we're planning to do.

5 Generally after -- during a session when  
6 a session is over, there are a lot of election bills  
7 that are passed, and our pattern of preparing for  
8 coming out of session, going into a season of getting  
9 ready for elections, we start looking at what bills  
10 have been passed. We're putting together the  
11 structure now on what we're doing on voter education  
12 and then fit those into the model. Sometimes when  
13 there are major changes like this, it does require  
14 more work on our -- a heavier workload on our staff,  
15 but the staff at the agency has proven time after time  
16 that they're capable of doing it.

17 SEN. VAN de PUTTE: Well, I believe that  
18 the Secretary of State's Office and particularly this  
19 Secretary of State, is more than willing and it's been  
20 shown. My concern is that -- have you seen the fiscal  
21 note that is attached to the implementation of this  
22 bill?

23 MR. SHORTER: Yes, ma'am, I have.

24 SEN. VAN de PUTTE: According to the  
25 fiscal note, your -- the Office of the Secretary of

1 State.

2 MR. SHORTER: Uh-huh.

3 SEN. VAN de PUTTE: -- is to absorb the  
4 cost. Given that, how do you plan to notify each of  
5 the voters, given that in Indiana and Georgia  
6 individual mailings were made to each registered voter  
7 informing them of the change in voter ID? And since  
8 we have no legal, I guess, basis, at least in our  
9 fiscal note, for the Secretary of State to implement  
10 that, how would the Secretary of State's Office plan  
11 to inform each voter, which were the requirements that  
12 they felt under -- to get pre-clearance under the  
13 Voting Rights Act, how would you-all achieve that with  
14 zero money?

15 MR. SHORTER: Senator, we would -- we  
16 would achieve that by using the funds that we've been  
17 using to do it in the past. We would use the HAVA  
18 Funds that have been set aside for voter education. I  
19 remember your asking this question earlier about the  
20 zero fiscal note that our office put on it. We put it  
21 on there, and when this bill -- when a similar bill  
22 was filed like this in the previous session, staff  
23 shared with me that there was a zero fiscal note on it  
24 as well, and it was because HAVA dollars were able to  
25 be used.

1                   SEN. VAN de PUTTE: I believe the fiscal  
2 note for the voter ID bill in the 80th Legislative  
3 Session that was passed by the House was at \$600,000,  
4 and so we --

5                   MR. SHORTER: Yes, ma'am.

6                   SEN. VAN de PUTTE: So that's what I  
7 wanted to ask is that -- I know that Hope is very good  
8 at squeezing dollars, but how do you -- how does the  
9 Secretary of State's Office plan to inform -- and it's  
10 not just the training. From what we understand of all  
11 voter ID laws that have been passed, each of those  
12 Secretaries of State have done an individual mailing,  
13 not just posting on the Web, not that. Do you plan to  
14 send an individual mailing to each voter with or  
15 without the passage of this bill?

16                  MR. SHORTER: That -- first of all, that  
17 would be, of course, Secretary Andrade's decision.

18                  As for that \$600,000 fiscal note in the  
19 previous bill, that was not a fiscal note that was  
20 put on by the Secretary of State's Office. My  
21 understanding is that was a fiscal note that was put  
22 on by DPS. Even though that fiscal note was \$600,000  
23 put on by DPS, our fiscal note on that previous bill,  
24 if I'm understanding correctly, is that it was still  
25 zero because we were not looking at those funds to --

1 SEN. VAN de PUTTE: Okay.

2 MR. SHORTER: -- and we do still now.  
3 For instance, right now in voter education, in HAVA  
4 dollars, we still have \$2 million left. Our staff, in  
5 anticipation of bills coming out of the session, we've  
6 been working with the EAC already to see -- make sure  
7 that bills that are passing through the House and  
8 through the Senate or through the Legislature of Texas  
9 would be able to -- we would be able to use HAVA  
10 dollars for that. We feel comfortable that we can,  
11 but we don't want to get towards the end of the  
12 session and find out that we were incorrect.

13 SEN. VAN de PUTTE: Thank you. I would  
14 also ask the questions that I asked Sen. Fraser that  
15 they said that the Secretary's Office would be more  
16 appropriate. With regard to naturalized citizens,  
17 what is the difference between a certificate -- a  
18 citizenship certificate, which is in the first section  
19 of the bill that's allowable with the photo ID, and  
20 citizenship papers, which is allowed under the second  
21 part of the bill?

22 MR. SHORTER: Senator, I remember your  
23 asking that question earlier today, and I asked our  
24 staff today to help me and answer that question. They  
25 have not gotten back to me, of course, at four o'clock

1 this morning. But if you would allow me to get you  
2 the answer to that in a few hours, I will provide that  
3 for you.

4 SEN. VAN de PUTTE: Thank you. That  
5 would be helpful to us since we have 56,000  
6 naturalized citizens. And I believe the certificate  
7 is the eight by eleven certificate that is issued at  
8 the time of naturalization, which has a photo, but in  
9 the case of many of our constituents who have been  
10 naturalized it is a photo of them when they were a  
11 young child or a young adult, and the citizenship  
12 papers may be the little wallet size card. So it  
13 doesn't have a photo.

14 MR. SHORTER: Yes, ma'am.

15 SEN. VAN de PUTTE: But I think because  
16 of the language and since it's each of those  
17 documents, it would be very helpful to us.

18 And I know that there are probably some  
19 more questions from other members, but I know that our  
20 Stenographer has been there, but when you come back, I  
21 know that some of the questions, if I have the chance  
22 to ask, or maybe one of the other members, is the  
23 statistical and demographic data of our current Texas  
24 voters and who are registered.

25 MR. SHORTER: Yes, ma'am.

1                   SEN. VAN de PUTTE: So I will stop at  
2 this point the questions so that we can take a break,  
3 but just to let you know that's probably coming up.

4                   MR. SHORTER: Thank you.

5                   SEN. VAN de PUTTE: Thank you,  
6 Mr. Chairman. I'll proceed after.

7                   SEN. DUNCAN: Do you want to maintain  
8 the floor when you come back?

9                   SEN. VAN de PUTTE: I would love to  
10 maintain the floor after just to continue, but I don't  
11 want to go beyond the 4:40 a.m.

12                  SEN. DUNCAN: Okay. We will then --  
13 Members, with that we will stand at ease for ten  
14 minutes and be back at 4:50.

15                  (Recess: 4:41 a.m. to 4:53 a.m.)

16                  SEN. DUNCAN: Okay. Members, we'll come  
17 back to order. Sen. Van de Putte has the floor.

18                  Before she begins again, we'll have -- I  
19 need to make this announcement to the folks who are in  
20 the gallery or who are waiting to be in public  
21 testimony. The Chair would request that anyone  
22 wishing to testify return to the registration desk and  
23 check in with the clerk. This will allow the clerk to  
24 pull the relevant witness cards, and we can proceed  
25 through public testimony more efficiently. All

1 witness information will be entered into the record  
2 and witnesses present and testifying will be noted as  
3 such. Those who do not testify will be entered into  
4 the record as nontestifying but registering their  
5 position for or against the Senate Bill 362. We think  
6 this will be a way to help facilitate those and also  
7 give us a little better idea of how to manage yours  
8 and our time.

9 Sen. Van de Putte, you're recognized.

10 SEN. VAN de PUTTE: Thank you,  
11 Mr. Chairman.

12 Thank you. It's good to be back with  
13 you again. Before I ask some of the demographic data,  
14 there was one part that I forgot to ask that I had  
15 asked Sen. Fraser and wanted to reiterate. Under the  
16 proposed bill, we have two different types of military  
17 ID as well: Those military IDs that have a photograph  
18 and the military IDs that do not have a photograph,  
19 and they are listed, I think, in two different  
20 sections of the bill.

21 My question is having to deal with the  
22 inconsistencies of addresses with our military  
23 members, not veterans. Once they're veterans, they're  
24 living in Texas and not here because of the duty  
25 station. Under the provisions of this bill or maybe

1 even currently, but currently our military members do  
2 not have to show a photo identification. Under this  
3 bill they would. How would a clerk or election judge  
4 treat the inconsistencies in nonalignment of address  
5 on the photo ID with the -- with the certificate?

6 MR. SHORTER: Senator, I don't have that  
7 answer, but I will get it for you, and that would  
8 involve -- and I'll tell you what I will go through:  
9 Asking my staff and also visiting with the clerks to  
10 see have they seen this, is this something that has  
11 happened already, or based on this particular  
12 bill would it happen.

13 SEN. VAN de PUTTE: Well, I don't think  
14 we know because they don't have to show a photo ID.

15 MR. SHORTER: Correct; you're right;  
16 you're right; absolutely.

17 SEN. VAN de PUTTE: And because many of  
18 those members that are here still have their own  
19 state's driver's license because -- or they're issued  
20 the DOD license on some installations, it doesn't  
21 reconcile with the voter certificate.

22 MR. SHORTER: Right.

23 SEN. VAN de PUTTE: And particularly for  
24 those career military who then become civilian, they  
25 keep their -- that because they may be going to



1 retire, and it's particular. So if you would do that?

2 MR. SHORTER: Yes, ma'am.

3 SEN. VAN de PUTTE: And in that also how  
4 would, under the proposed bill, we treat the  
5 inconsistencies in addresses in college students who  
6 may still keep their primary place of residence, which  
7 is their home and the home of their parents, for  
8 purposes of their driver's license because that's  
9 their permanent address and they are only temporary,  
10 yet choose to register in the town that they are now  
11 going to college. So the photo identification or  
12 driver's license does not match up with the  
13 certificate. So those are two instances where how  
14 would that -- those be treated.

15 MR. SHORTER: Yes, ma'am.

16 SEN. VAN de PUTTE: My other question  
17 is -- we know from some of the data that the affected  
18 groups and what we -- what is the state's burden to  
19 prove at the Department of Justice is the availability  
20 for African-Americans, Hispanics, language groups to  
21 be afforded the same ability, in other words, no  
22 discrimination? Can you tell us of the 13 million  
23 plus voters, do we know how many voters are  
24 African-American in the State of Texas?

25 MR. SHORTER: Senator, we don't know

1 because that data is not tracked on race and ethnicity  
2 right now. The only thing that is tracked is we  
3 can -- based on our new TEAM system, we can  
4 cross-reference Hispanic surnames, but that's  
5 inconclusive, so --

6 SEN. VAN de PUTTE: Van de Putte.

7 MR. SHORTER: Exactly. So the answer is  
8 right now there's not a mechanism to track race or  
9 ethnicity.

10 SEN. VAN de PUTTE: So how would we be  
11 able -- if we don't know -- if we're not capturing the  
12 data, the data is not available as a base point of how  
13 many registered voters we have who are  
14 African-American or Latino or Spanish speaking, how  
15 can we benchmark and prove up to the Justice  
16 Department and support litigation that there will not  
17 be a negative effect since we have no data?

18 MR. SHORTER: I would assume that our  
19 staff has been using some other means to do that. I  
20 don't know what that is, but I will find out for you.

21 SEN. VAN de PUTTE: Okay. So what I  
22 have so far is that you will get back to us on  
23 certificate versus papers --

24 MR. SHORTER: Yes, ma'am.

25 SEN. VAN de PUTTE: -- for naturalized

1 citizens --

2 MR. SHORTER: Yes, ma'am.

3 SEN. VAN de PUTTE: -- since the other  
4 states that have passed this so far do not have nearly  
5 the degree of those naturalized citizens as we do; and  
6 that you will also check on the incongruencies of  
7 address for both our military members and college  
8 students.

9 MR. SHORTER: Yes, ma'am.

10 SEN. VAN de PUTTE: And you will also  
11 get back with us the data, if it exists, of how many  
12 voters we have that are indeed African-American and  
13 Hispanic so that we can have a benchmark. We need  
14 that data to be able to prove that. So those are the  
15 things that you are going to be helping us with.

16 MR. SHORTER: Yes, ma'am, I will; we  
17 will. John and I will be notifying staff so they can  
18 get on it and hopefully give you an answer before the  
19 end of the day.

20 SEN. VAN de PUTTE: Well, thank you, but  
21 I know you haven't gone to sleep yet, so I appreciate  
22 the hard work of your staff. And again, my regards to  
23 my dear friend, our Secretary of State.

24 MR. SHORTER: Thank you.

25 SEN. VAN de PUTTE: Thank you.

1                   SEN. WENTWORTH: The Chair recognizes  
2                   Sent. Whitmire. Sen. Whitmire? John? The Chair  
3                   recognizes Sen. Whitmire.

4                   SEN. WHITMIRE: No, I'll pass  
5                   (inaudible) I've got a quick question, quick, quick,  
6                   quick. You were responding to Sen. Fraser's  
7                   hypotheticals, and he was talking about if he ran in  
8                   and voted and then he went back out and got his  
9                   brother's card and voted again that nothing could be  
10                  done. Is it not true, sir, that the election officer  
11                  is in total control of his precinct? I've seen folks  
12                  be arrested for handing out cards too close, poll  
13                  watchers for harassing voters. Isn't it true that if  
14                  you try to go in and vote twice in the same timeframe  
15                  that you could be arrested for voter fraud at that  
16                  moment and maybe even have a mental warrant served on  
17                  you if you tried to do it like he described it? So  
18                  aren't we -- aren't we really being a little  
19                  ridiculous at five in the morning with some of our  
20                  hypotheticals?

21                  MR. SHORTER: Sir, I'm not --

22                  SEN. WHITMIRE: You were being awful  
23                  nice. I realize you're in a difficult position, but I  
24                  don't -- is it realistic that someone, the same person  
25                  could vote twice within a 30-minute timeframe?

1 MR. SHORTER: It's possible, sir.

2 Whether --

3 SEN. WHITMIRE: It's possible to get  
4 arrested for doing it, too, is it not?

5 MR. SHORTER: That is correct.

6 SEN. WHITMIRE: Okay. That's all I  
7 wanted to clear up because -- and I could go through  
8 his other hypotheticals.

9 What really concerns us and I guess it's  
10 been somewhat addressed is the cost and the commitment  
11 to educate the public.

12 MR. SHORTER: Yes, sir.

13 SEN. WHITMIRE: Have you been in any  
14 planning sessions where you're going to have the  
15 resources and you have the spots, as Sen. Williams  
16 pointed out? I mean, are we really serious and ready  
17 to go with that, or is that a hypothetical, too?

18 MR. SHORTER: No, sir. Our office is  
19 actively planning our voter education program for the  
20 next cycle now.

21 SEN. WHITMIRE: Well, that's great, but  
22 what's the provisions for doing a voter ID plan?

23 MR. SHORTER: What we're doing now is  
24 looking at -- because this is one of our new bills  
25 that we're working on and that has been brought to us

1 for us to look at, we're looking at what costs would  
2 be associated with doing those things within the bill  
3 and fitting those into the funds that we have  
4 available. Based on the fact that it is not a  
5 Presidential Election year, we feel that the funds  
6 that we have available now we could -- we could  
7 theoretically -- we could undertake this.

8           There are -- in terms of training for --  
9 training for elections and new initiatives, that's  
10 already -- we're already directed to do that. So our  
11 agency as a whole is -- there's some things you  
12 anticipate and you know and you plan for, and we're  
13 already there, sir. Because what we will have to do  
14 is we'll have to prioritize in terms of maybe some new  
15 initiatives versus -- that are not legislatively  
16 mandated versus those that you-all mandate to us.

17           SEN. WHITMIRE: Okay. I yield at this  
18 time.

19           SEN. DUNCAN: Sen. Watson, you're  
20 recognized.

21           SEN. WATSON: Thank you, Mr. Chair, and  
22 thank you for being here. I know it's been very long.

23           And, Members, one bit of information.  
24 Yesterday, not today, but yesterday, although it feels  
25 like one day, was his ten-year old son's birthday, and

1 he stayed with us all during that period of time,  
2 snuck away I think briefly to wish him a happy  
3 birthday, but we really appreciate your being with  
4 us --

5 MR. SHORTER: Thank you.

6 SEN. WATSON: -- and hope you will tell  
7 him we said happy birthday.

8 Just a couple of quick questions. One  
9 is you shared with me some numbers on a piece of  
10 paper, and I don't know what the paper was created  
11 for, but it has at the top of the page the number 5,  
12 and then it says "Number of voters who have registered  
13 since 2006 without a driver's license number." What  
14 was this document created for?

15 MR. SHORTER: Sir, this document was  
16 created -- Senator, this document was created in a  
17 response to questions that were asked of our staff  
18 last week by House Elections.

19 SEN. WATSON: Okay. And in that, what  
20 you did is you created two sets of numbers: One was a  
21 set of numbers of voters who registered since  
22 January 1, 2006. And explain for me again why that's  
23 an important number date.

24 MR. SHORTER: When the Help America Vote  
25 Act was passed in 2002, there was a requirement put in

1 the provisions of the Help America Vote Act for  
2 uniformity standard purposes for the driver's license  
3 to be a required form of ID in terms of registration.  
4 Prior to January 1, 2006, it was optional as to  
5 whether or not you included your driver's license on  
6 your voter registration application.

7 The voter registration application  
8 now -- the first thing it asks for in Section 8 is  
9 either your driver's license and your Texas -- or your  
10 Texas ID, and that's a requirement if you have one.  
11 Prior to January 1, 2006 it was optional.

12 SEN. WATSON: Okay. So the numbers you  
13 came up with you demonstrated -- and I think we had  
14 had some conversation -- Sen. Fraser and I had had  
15 some conversation earlier in the day. And when you  
16 look at those who have registered since January 1,  
17 2006, the key date that you mentioned, and you look at  
18 those numbers, about 91.9 percent have registered  
19 using a driver's license. Is that correct?

20 MR. SHORTER: Using a driver's license  
21 or social security number.

22 SEN. WATSON: Well, here is the way --  
23 let's make sure we're clear on this. The first  
24 category of numbers who registered with a driver's  
25 license, and I guess that's with a driver's license



1 exclusively. Is that correct?

2 MR. SHORTER: That is correct, sir.

3 SEN. WATSON: And then the second  
4 category is those who registered with a social  
5 security number, and that would be exclusively with a  
6 social security number?

7 MR. SHORTER: That is correct.

8 SEN. WATSON: And then the third  
9 category would be those who did something you don't  
10 really have to do, but they did it, and they filled in  
11 both driver's license and social security?

12 MR. SHORTER: That is correct.

13 SEN. WATSON: So if I wanted to identify  
14 the number of people who registered with a Texas  
15 driver's license and get a total number, I would add  
16 Category 1 and Category 3?

17 MR. SHORTER: That is correct, Senator.

18 SEN. WATSON: Now, something else you  
19 did in response to the question from House Elections  
20 was you said "In addition agency staff queried the  
21 entire statewide file which reflects the following  
22 breakdowns concerning identification numbers for all  
23 voters." So that would be folks with voter  
24 registration certificates, voter registration  
25 certificates including those from before January 1,

1 2007?

2 MR. SHORTER: That is correct. That's  
3 everyone in our vote registration system.

4 SEN. WATSON: And those folks weren't  
5 required, as you've said, to utilize a driver's  
6 license or social security number?

7 MR. SHORTER: Yes, sir.

8 SEN. WATSON: And that -- when we look  
9 at those numbers, and you have the same categories,  
10 you have number of voters with a driver's license,  
11 again exclusively, number of voters with a social  
12 security number exclusively, number of voters with  
13 both and the number of voters with neither. When we  
14 put those numbers together, we know that about  
15 25 percent of the population that have voter  
16 registration certificates don't indicate that they  
17 have -- that they didn't use a Texas driver's license  
18 to get that. Is that right?

19 MR. SHORTER: Yes, sir.

20 SEN. WATSON: Now, you also would have  
21 no way of knowing in either of those that have been  
22 registered since January 1, 2006 or those that have  
23 been registered since well before that time who might  
24 have lost their driver's license during that period of  
25 time?

1 MR. SHORTER: No, sir.

2 SEN. WATSON: And the Secretary of  
3 State's Office wouldn't have any way of knowing whose  
4 driver's license might have been expired for over two  
5 years now?

6 MR. SHORTER: If they already have their  
7 voter registration card.

8 SEN. WATSON: Right. So, for example,  
9 if I registered to vote, let's say ten years ago, just  
10 to use a round number, I wouldn't have been required  
11 to use a driver's license to register. Is that  
12 correct?

13 MR. SHORTER: Correct.

14 SEN. WATSON: And if I continue to vote  
15 on a regular basis, as I understand it, I am  
16 re-registered each time I register to vote or I go  
17 vote. Right?

18 MR. SHORTER: Yes, sir.

19 SEN. WATSON: So if I lost my driver's  
20 license nine years ago but I continue to register, I  
21 might be a registered voter in the State of Texas  
22 maybe even use my driver's license when I registered,  
23 but I no longer would have a driver's license?

24 MR. SHORTER: That's a possibility, sir.

25 SEN. WATSON: No one has asked the

1 Secretary of State's Office to do any sort of studies  
2 or provide any information demonstrating whether there  
3 are certain populations or demographic groups in Texas  
4 that are less likely to have a driver's license and  
5 use their driver's license when they apply for a voter  
6 registration certificate, have they?

7 MR. SHORTER: To my knowledge, no, sir.

8 SEN. WATSON: And the truth is you  
9 wouldn't have any way of putting that data together,  
10 would you?

11 MR. SHORTER: Not as an agency alone.

12 SEN. WATSON: Well, if I told you that  
13 the Texas Department -- you'd have to go to DPS?

14 MR. SHORTER: Probably. That's one of  
15 the agencies that pops into my head.

16 SEN. WATSON: And I think we talked a  
17 little bit earlier today -- I think I showed you an  
18 answer that DPS has given. You wouldn't be surprised  
19 to know that DPS is not aware of any studies regarding  
20 a way to demonstrate whether certain populations or  
21 demographic groups are less likely to secure a  
22 driver's license than others, you weren't surprised  
23 when I shared that with you earlier today, were you?

24 MR. SHORTER: No, sir. I recall.

25 SEN. WATSON: Yeah. Thank you very

1 much, and I really do appreciate it along with  
2 everybody that you've given us so much time.

3 SEN. DUNCAN: Thank you, Sen. Watson.  
4 The Chair recognizes Sen. Patrick.

5 SEN. PATRICK: Thank you, Mr. Chairman.  
6 Just a quick question. There was an earlier comment  
7 made that it was very unlikely that someone would vote  
8 twice in 30 minutes. But the truth is if someone did  
9 fraudulently get, let's just say ten voter  
10 registrations, and they didn't send in a name like  
11 Mickey Mouse but sent in a very normal name that  
12 wouldn't catch anyone's attention. And if I had ten  
13 cards or that person had ten cards, they could go to  
14 one precinct and vote, and they could go down the  
15 street to another precinct and vote --

16 MR. SHORTER: (Nodded)

17 SEN. PATRICK: -- and another precinct  
18 and vote because they'd go in over a different  
19 registration card each time.

20 MR. SHORTER: Okay.

21 SEN. PATRICK: So a person could, if  
22 they wanted to, or they could register in the same  
23 precinct and go back three days later if they started  
24 during early voting. Right?

25 MR. SHORTER: Repeat your -- repeat the

1 last part of your question.

2 SEN. PATRICK: The last part of the  
3 question, if you had registrations in the same  
4 precinct, you could go back over a period of multiple  
5 days if you were willing to take that risk and vote.  
6 So a person could vote more than once. I mean, it's  
7 not an extreme thought that someone could register  
8 under several different names.

9 MR. SHORTER: It's a hype -- it is one  
10 of those hypotheticals that could happen.

11 SEN. PATRICK: All right. Thank you.

12 SEN. DUNCAN: Thank you, Sen. Patrick.  
13 The Chair recognizes Senator -- do you want to go  
14 ahead, Sen. Watson, and enter -- you've got a document  
15 you want to enter?

16 SEN. WATSON: Yeah, let me just ask a  
17 quick question. I should have done that. Do you have  
18 a clean copy of the sheet that has Question No. 5, the  
19 answer from the House Elections Committee that we  
20 could make an exhibit for our record?

21 MR. SHORTER: Yes, sir.

22 SEN. WATSON: Okay. We'll wait until  
23 you're done, but if you'll just remind me of that,  
24 we'll attach that after your testimony.

25 MR. SHORTER: Yes, sir.

1                   SEN. WATSON: Thank you very much.  
2 Thank you, Mr. Chair, for letting me do that out of  
3 order.

4                   SEN. DUNCAN: The Chair recognizes  
5 Sen. Davis.

6                   SEN. DAVIS: Good morning.

7                   MR. SHORTER: Good morning.

8                   SEN. DAVIS: I join my colleagues in  
9 saying thank you to you for staying so long with us.  
10 And I have a very quick question for you. I apologize  
11 if you've already asked -- been asked this question  
12 and answered it, but what is the amount of money that  
13 the Secretary of State has set aside in anticipation  
14 of the possibility of having to educate our voter  
15 community about the requirements -- the new  
16 requirements that would be placed upon them under the  
17 Senate Bill that we're looking at today?

18                  MR. SHORTER: We haven't determined the  
19 actual amount, Senator. We are looking at all of our  
20 opportunities and looking at the available resources  
21 we already existed -- already have. We know right  
22 now -- if there were no other funding, we know that we  
23 have access to \$2 million through our current HAVA  
24 Funds for voter education.

25                   What we need to do now is -- and we feel

1 comfortable based on the projections -- being that it  
2 is not a Presidential Election year, we feel  
3 comfortable that we can do what needs to be done  
4 within that window. There are also some opportunities  
5 potentially for us to maybe draw down some additional  
6 HAVA Funds. We're not -- we're investigating that as  
7 well.

8               So what we're looking at is if this bill  
9 is passed as it is, staff is looking at, based on  
10 access to HAVA dollars, what would it cost to do this,  
11 to implement this, to do the training, to do the voter  
12 education statewide. We don't have those figures yet.  
13 However, based on past precedent within the agency and  
14 with the access to those federal funds, we feel like  
15 we can do it with those funds and be consistent with  
16 how we've done it every year.

17               SEN. DAVIS: Let's say we weren't  
18 examining the issue that's before us right now and we  
19 weren't going to create any kind of new voter ID  
20 requirement in the State of Texas. What would the  
21 Secretary of State's Office have used that \$2 million  
22 amount for? What kind of educational programs do you  
23 typically engage in?

24               MR. SHORTER: Well, we don't -- we don't  
25 anticipate this particular bill consuming all of



1 that -- those funds. For instance, our entire effort  
2 last year would focused on some key things. And if  
3 you don't mind, I'd like to kind of just --

4 SEN. DAVIS: I'd appreciate that.

5 MR. SHORTER: -- share with you some of  
6 the ideas from talking with our staff on voter  
7 education. In 2008 we have what's called a Vote Texas  
8 Program. That's our voter education program. That  
9 focuses on newspaper, radio, TV, PSAs, interactive  
10 Web. It allows us an opportunity to be creative to  
11 reach the people where they are, and we do several  
12 things: We focus on the basics of education. Number  
13 one, how to vote, what needs to happen to vote, where  
14 to vote, where are you going to vote, what do you  
15 bring -- what do you need to bring with you to vote.  
16 If this were -- if this bill were to pass, what would  
17 you need to bring to vote would be the -- it would  
18 change.

19 We're at a point in our development  
20 where we can now make those changes. Theoretically  
21 what happens in the Secretary of State's Office is we  
22 get through with the session, we look at all of the  
23 changes and we use the summer months -- we use the  
24 spring to answer all your questions and start  
25 planning. We have certainty after the session as to

1 what you as a legislative body have given us, the  
2 mandates and directions you have given us. We use  
3 that time then to start implementing, plugging in.

4 One of the other things we do is what is  
5 the process and -- what is the actual process and then  
6 what are the rights of the voters. So based on that,  
7 it seems very plausible that we would be able to take  
8 the directives of this bill or any bill that you as a  
9 legislature provide and fit it into that formula and  
10 meet HAVA requirements for what we are mandated to do  
11 in terms of educating our voters.

12 SEN. DAVIS: And in the past when you've  
13 implemented a program like that, and I gather from  
14 what you're saying you've engaged in exactly this kind  
15 of --

16 MR. SHORTER: Yes, ma'am.

17 SEN. DAVIS: -- education effort before,  
18 what would the cost be in a typical election cycle for  
19 you to administer that program?

20 MR. SHORTER: Last year we -- last  
21 year -- the last election cycle was \$3 million.

22 SEN. DAVIS: It was \$3 million. And  
23 that's \$3 million educating a voter group that has for  
24 many years been operating under the same rules  
25 repeatedly. Correct?

1 MR. SHORTER: Yes, if there were -- I  
2 came to the agency during the middle of that process.  
3 If there were legislative changes during the last  
4 legislative cycle, those changes were intertwined into  
5 the voter education process. I'm not -- I'll have to  
6 go back and ask what changes were made during the last  
7 legislative session that would have affected how we  
8 rolled out this particular -- last year's initiative.

9 For instance, within all of that,  
10 there's also the Project Vote where we start -- the  
11 education process of educating voters starts also at  
12 the age of educating our school-aged kids.  
13 1.1 million people -- 1.1 million students in over 300  
14 school districts last year participated in Project  
15 Vote. So those were some extra things that we've  
16 always done even with legislation like this we will  
17 still be able to do because we have it down to a  
18 science now on how to do it, and we've been able to  
19 bring those costs down.

20 SEN. DAVIS: And now that you have it  
21 down to a science and in the last election cycle given  
22 that you have it down to a science, you've spent, you  
23 said, about \$3 million on the program. Could you  
24 anticipate a scenario where with a new voter ID  
25 requirement, one that is, well, quite lengthy in terms

1 of the amount of paper that it this takes up on the  
2 bill that's been proposed, could you anticipate given  
3 the need to educate on so many new features of a voter  
4 program that it might cost you more than \$3 million to  
5 educate Texans on that program?

6 MR. SHORTER: Senator, based on past  
7 precedent, I think it will be highly unlikely that the  
8 expenses would increase that much because many of the  
9 things that this bill is requiring us to do we're  
10 already doing it on legislation that has existed for a  
11 long time.

12 When we have a poll -- when we have the  
13 poll worker training or the training for Election  
14 Officials, it's very detailed information, and there  
15 are little tweaks that the legislature makes, and  
16 these are not 30-minute trainings. These are  
17 generally two- to three-day trainings. So it's not  
18 like if we -- if this bill were implemented the  
19 training needs would be -- or the training modules  
20 that will be developed would be any different than the  
21 modules that we are already developing because the  
22 ones we're developing now are pretty extensive.

23 SEN. DAVIS: And did the \$3 million  
24 figure that you -- that you cited a moment ago on your  
25 voter outreach program in the last election cycle, did

1 that include the costs of training poll workers on  
2 whatever tweaks came in the last legislative session?

3 MR. SHORTER: It is my understanding  
4 that it did, but, Senator, I don't mind verifying that  
5 for you to make sure that it's all-inclusive.

6 SEN. DAVIS: I would appreciate that.  
7 And if you could provide us with information in terms  
8 of exactly what that poll training looked like, the  
9 poll worker training looked like, I would appreciate  
10 that.

11 MR. SHORTER: Senator, we're very  
12 excited about our poll worker training because we have  
13 two aspects: It can be done in person, but we also  
14 have poll worker training now that can be done on  
15 line. And one of the things we're really trying to  
16 do -- and with the hope of encouraging more people to  
17 volunteer or sign up to be poll workers.

18 SEN. DAVIS: Would you anticipate that a  
19 bill suggesting the changes of this magnitude might be  
20 a more complex training program -- that might require  
21 a more complex training program than you've had to  
22 engage in in the past where the legislature may have  
23 tweaked, to use your word, the voter requirements?

24 MR. SHORTER: And maybe, Senator, using  
25 the word "tweaked" was not probably the appropriate

1 word to use. I don't see anything at this point that  
2 would cause me as the operations person within the  
3 agency to be alarmed.

4 SEN. DAVIS: Okay. Thank you. I  
5 appreciate it.

6 SEN. DUNCAN: All right. Thank you,  
7 Sen. Davis. There are no other members in the queue  
8 to ask questions. So, Mr. Shorter, you are excused.  
9 Thank you for your testimony.

10 MR. SHORTER: Thank you, Mr. Chairman.

11 **TESTIMONY BY DENNIS BOREL**

12 SEN. DUNCAN: The Chair calls Dennis  
13 Borel. Mr. Borel, do you have written testimony?

14 MR. BOREL: (Inaudible)

15 SEN. DUNCAN: Do you have pictures for  
16 us? All right. We'll need to get those marked at the  
17 right time.

18 MR. BOREL: Good morning. My name is  
19 Dennis Borel with the Coalition of Texans with  
20 Disabilities. Yes, I am from the Texas --

21 SEN. DUNCAN: Hang on just a minute.

22 MR. BOREL: Sure.

23 SEN. DUNCAN: We need to get your timer  
24 started.

25 MR. BOREL: Okay.

1 SEN. DUNCAN: All right. You're off.

2 MR. BOREL: Dennis Borel with the  
3 Coalition of Texans with Disabilities, a cross  
4 disabilities statewide organization, and I think  
5 listening to this day has been tremendously  
6 interesting. I haven't heard a lot of talk about  
7 people with disabilities. We've talked about a lot of  
8 different demographic groups. So I will use my time  
9 to talk about people with disabilities and my  
10 experiences with them and how I think this bill may  
11 impact them.

12 It's been -- one of the most fun things  
13 I've done for the last about four or five years is  
14 work with the Secretaries of State, starting with  
15 Mr. Conner, then Roger Williams and Phil Wilson. I  
16 met Secretary Andrade recently and look forward to  
17 working with her, but working on HAVA stuff and most  
18 specifically the opportunities to go around the state  
19 and do training sessions on accessible voting and  
20 accessible voting technology to disability groups  
21 around the state. I've been from El Paso to Beaumont  
22 to Laredo to Odessa and Dallas, points in between.  
23 It's been a pretty interesting experience, and I've  
24 met some incredible people doing that, and it's been  
25 inspiring.

1                   In a few of the -- a few of the most  
2     inspiring ones, I've worked with a lady that was  
3     totally without sight, and she was able to use the new  
4     voting technology to cast a private ballot for the  
5     first time. I met another guy with very significant  
6     cerebral palsy. He didn't even have enough control to  
7     speak, and he had -- he wore a cap with a stick that  
8     came perpendicular out of his forehead, and he would  
9     use a speak synthesizer, but his brain was clear and  
10    fine. And using that stick out of his cap he was able  
11    to work a voting machine on his own.

12                  But to me the best was a gentleman I met  
13    who was a member of the paralyzed -- Texas Paralyzed  
14    Veterans. He had broken his neck very high up, and he  
15    has no movement below the shoulders. He operates his  
16    power wheelchair with a sip and puff device. And  
17    incredibly he told me this story about going to his  
18    polling place and hooking up his sip and puff device  
19    to his machine, and for the first time since he broke  
20    his neck was able to cast a secret ballot. And, yes,  
21    there were tears in his eyes when he told me this  
22    story. These are the kinds of things that I have  
23    really loved doing for several years now.

24                  To me perhaps the most amazing one was  
25    out in Palestine. I was invited to come out there and



1 do a training. I went out there and I -- there's some  
2 photographs you're looking at. I didn't give you  
3 written stuff. By this time of night, it's better to  
4 look at photographs anyway. But I went out to  
5 Palestine and I got there and they said "Okay. Now  
6 we're going to take off and take you where you're  
7 going to go for your training, and we went to a  
8 sheltered workshop, which, you know, is not something  
9 I particularly like. It's a place where people with  
10 disabilities, cognitive disabilities spend the day.  
11 They were assembling nuts and bolts all day, and they  
12 get some piece -- piece of work payment out of it.

13 But going in there I was kind of  
14 wondering "Well, how am I going to -- how am I going  
15 to do this training?" I had the local County Clerk  
16 with me and an accessible machine, and we set it up.  
17 And I quickly found out that even though I work with  
18 people with disabilities all the time I'm capable of  
19 making misassumptions. Even though these were folks  
20 with cognitive disabilities, they knew who McCain was,  
21 they knew who Obama was, they knew a Presidential  
22 Election was coming up. A handful of them were  
23 already registered. The others got registered there  
24 by the County Clerk, and they were tremendously  
25 enthusiastic. In fact they were the most enthusiastic

1 group I trained in the four years I've been doing  
2 this. They loved working the machine. They were  
3 excited about it. It told me a lot.

4 You know, this group, I'm quite sure  
5 that not a single one of them had a driver's license.  
6 I'm quite sure that none of them had a passport. I  
7 doubt that any had utility bills in their name. I  
8 don't think any of them were licensed hunters,  
9 fishers, carry a concealed weapon. Some may have  
10 Medicaid cards.

11 But the thing I was left with at the end  
12 of that day as I was left with at every single one of  
13 these trainings is all of us see the right to vote as  
14 something precious. I think for our citizens with  
15 disabilities it's at an even higher level. It's even  
16 more precious to them, how much they value it and to  
17 be able to do it on their own.

18 You know, I mentioned that they don't  
19 often have photo IDs, in fact they rarely do. And I  
20 tried to find some statistics on this and, you know,  
21 I've heard a few people talk about that some things  
22 are not tracked. Well, one thing I found out that we  
23 don't track is whether a driver has a disability or  
24 not. We track if they need corrective lenses of other  
25 things like that, but not disabilities. So I have to

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1     rely on only my observations and spending the last  
2     nine years going around Texas and working with groups  
3     of people with disabilities and my own anecdotal ideas  
4     about it. And I'd have to say that there's no doubt  
5     that people with disabilities just don't have a  
6     driver's license like the rest of the population.  
7     They simply maybe cannot operate a vehicle, maybe they  
8     don't see well enough, maybe they don't have enough  
9     manual dexterity, but their incidents of driver's  
10    license is certainly far below that of the general  
11    population.

12               As far as things like passports, people  
13    with disabilities are three times as likely to be  
14    living in poverty as a general population. They're  
15    not doing a whole lot of international travel. That's  
16    not to say that there aren't people with disabilities  
17    doing that, not to say that people with even very  
18    significant disabilities have driver's licenses, even  
19    quadraplegics, but as a general -- a generalization  
20    they're less likely to have those kinds of photo IDs.

21               You know, I was thinking about this, and  
22    I think that there's probably only one other  
23    demographic group that has maybe a lesser  
24    participation in driving and passports, and I think  
25    that would be the very elderly. You know, I think

1 those two groups are kind of off by themselves of  
2 having a little bit less access to that.

3 Now, I do think that there are some of  
4 those alternative credentials that could work, but I  
5 think in almost every single case the likelihood of a  
6 person with a disability having one of those  
7 alternative credentials is far less than in the  
8 general population with the sole exception of the  
9 Medicaid card.

10 And the other thing is in our state,  
11 Texas is better than some other states. Some other  
12 states do not allow people with cognitive disabilities  
13 to vote. We do in Texas; we do. But, you know,  
14 people with cognitive disabilities are recently  
15 returned veterans with traumatic brain injuries.  
16 Sometimes their ability to gather all the documents  
17 they need to go somewhere is not so good. Sometimes  
18 they're not so good at doing that. Sometimes they  
19 might end up at the polling place and maybe they  
20 forgot one of the things they need. Or if they had  
21 that traumatic brain injury and they have a short-term  
22 memory condition, they just simply forgot to bring  
23 them, forgot their ID.

24 You know, to me it comes down -- the one  
25 question I keep coming down to is in any piece of

1     legislation, would this affect people with  
2     disabilities more than other groups? And I think this  
3     one does, and I think it does that. There would be a  
4     level of effort required of them to line up everything  
5     they need more so than other segments of our  
6     population.

7                     With that, I'll take any questions if  
8     you have them.

9                     QUESTIONS FROM SENATE FLOOR

10                    SEN. DUNCAN: Thank you, sir.

11     Sen. Zaffirini, you're recognized.

12                    SEN. ZAFFIRINI: Thank you,  
13     Mr. Chairman.

14                    Mr. Borel, thank you for your very  
15     compelling testimony. I hope that everyone listened  
16     to you and listened to you carefully. Are persons  
17     with disabilities less likely to have photo IDs?

18                    MR. BOREL: Yeah, absolutely, certainly  
19     in the case of the driver's licenses. Obviously one  
20     of my member organizations is the American Council for  
21     the Blind of Texas. I mean, 100 percent of them don't  
22     have driver's licenses. Other people with cerebral  
23     palsy, quadraplegic spinal cord injuries, amputations,  
24     cognitive disabilities, traumatic brain injury, all  
25     have far less likelihood of driver's licenses and

1     passports.  It's more a function of the fact that --  
2     generally considered to be the lowest income  
3     demographic group in our society and, therefore, less  
4     likely to travel.

5                     SEN. ZAFFIRINI:  Have you read Senate  
6     Bill 362?

7                     MR. BOREL:  I have; I have, yes.

8                     SEN. ZAFFIRINI:  So you're familiar with  
9     the other forms of documentation that can be used to  
10    prove one's identity?

11                    MR. BOREL:  Pretty much.  I don't know  
12    if I can recall every single one of them off the top  
13    of my head.

14                    SEN. ZAFFIRINI:  Are persons with  
15    disabilities less likely to have that kind of  
16    documentation available to prove their identity?

17                    MR. BOREL:  Yeah, absolutely.  You know,  
18    very few would have a permit to carry a concealed  
19    handgun.  There are people, even people visually  
20    impaired, even people totally blind, even people with  
21    quadraplegics, that do have hunting licenses.  But  
22    I'll tell you as a rule, they're far less likely to  
23    have hunting licenses.  They're also far less likely  
24    to have utility bills in their name.

25                    SEN. ZAFFIRINI:  What additional

1 barriers do persons with disabilities have in  
2 obtaining the kinds of identification required in this  
3 bill?

4 MR. BOREL: Uh-huh. Well, there is the  
5 monetary thing as an extremely low-income group, and  
6 then just getting around and gathering that  
7 information, you know, being reliant on public  
8 transportation or transportation provided by other  
9 people or having to have the caregiver with you, or  
10 perhaps a person is living in an institution like a  
11 nursing facility or intermediate care facility for the  
12 mentally retarded or even in an assisted living  
13 center. These are all folks that just are not as  
14 mobile as the rest of us, and they're not getting  
15 around as well as the rest of us.

16 SEN. ZAFFIRINI: Thank you. Is the  
17 notice provided for in Senate Bill 362 sufficient to  
18 ensure access to accurate information about this new  
19 ID requirement for the full range of persons with  
20 disabilities with whom you work?

21 MR. JOHNSON: No, not in my mind. I  
22 think we have a pretty aggressive campaign, the HAVA  
23 campaign. And like the gentleman in front of me,  
24 Coby, was talking about the Vote Texas, those things.  
25 The first Vote Texas effort was a \$5 million effort.

1 The second was a \$3 million effort, and that was about  
2 accessible voting for the most part. But that  
3 actually took stuff around, put stuff on PSAs, on TV.  
4 It did radio ads. It funded people like me to go out  
5 and do hands-on types of training. All those kinds of  
6 things, all those variety of things are needed. I  
7 think the written notice is just inadequate frankly.

8 SEN. ZAFFIRINI: What else would be  
9 needed if this bill were passed to ensure persons with  
10 disabilities really understood this law?

11 MR. BOREL: Well, I would -- well, I  
12 believe the Vote Texas campaign was successful, but  
13 you know, even though we're, I believe, five years in  
14 to Vote Texas I still think there's an additional need  
15 just for the accessibility components of HAVA. So I  
16 think it's not a short-term deal. I think this would  
17 need to be planned over perhaps several biennium. I  
18 really believe in the traveling road show, the  
19 hands-on deal where you go out to disability groups  
20 and out to their communities and find out where they  
21 are and do it face to face. That would be my  
22 recommendation.

23 SEN. ZAFFIRINI: What effect do you  
24 believe that this bill, if it becomes law, would have  
25 on the turnout of persons with disabilities on



1 election day or early voting?

2 MR. BOREL: Yeah, that's -- I've thought  
3 about this a lot, Senator. I would say at the -- at  
4 the beginning of HAVA, I would have said that there  
5 were two groups of voters with disabilities. The  
6 first group had gone to vote and voted, but had a hard  
7 time doing it and was less likely to go back, and the  
8 second group never went because they heard their  
9 friends talk about how they couldn't get in the  
10 polling place or couldn't get a private ballot. So  
11 there was kind of like this word of mouth negativity.

12 I think in the last few years as  
13 successful voting technology has come into play,  
14 polling places have become more accessible, I'm seeing  
15 a third category of voters with disabilities, ones  
16 that are telling their friends that "I did have a  
17 successful experience."

18 And I think if we set up experiences  
19 where voters with disabilities go to the poll and they  
20 don't have the right ID, and they will be less likely  
21 to have this ID and they haven't learned about it and  
22 they do a provisional ballot or they just simply  
23 leave, then those kinds of word of mouth stories will  
24 spread, and I think that will have an affect on some,  
25 a negative side frankly.

1                   SEN. ZAFFIRINI: Thank you. Thinking  
2 specifically of Advocacy, Incorporated, do you believe  
3 that persons with disabilities who work with Advocacy,  
4 Incorporated would be able to meet the identification  
5 standards of this bill?

6                   MR. BOREL: You know, the ones who work  
7 with Advocacy, Incorporated, I bet they would because  
8 in many ways activists people with disabilities are  
9 going to -- have figured out some way to get a photo  
10 ID, whether it's like the DPS, the state  
11 identification. I'd be more concerned about the  
12 people who aren't necessarily activists who are more  
13 maybe staying in their communities and their home most  
14 of the time, maybe in an institution, maybe in an  
15 assisted living center.

16                  SEN. ZAFFIRINI: What effect do you  
17 believe the bill would have on the number of  
18 provisional ballots cast by voters with disabilities?

19                  MR. BOREL: Well, I think it would  
20 clearly increase them because they would be casting  
21 them instead of just a regular ballot. I'm a little  
22 unclear about whether they would have to then go back  
23 again and show correct ID -- is that correct -- or is  
24 it -- would it be counted just as the initial  
25 provisional ballot? That I'm a little unclear about.

1 But if they would have to go back, you  
2 know, return back and show correct ID, now that's  
3 another trip. And for people that aren't all that  
4 mobile who have to rely on others, who don't see well,  
5 who use wheelchairs, who use walkers, who are 85, 90  
6 years old, any time you're making a second trip to go  
7 do something, you're less likely to do it.

8 SEN. ZAFFIRINI: What are the most  
9 pressing issues reported by voters with disabilities  
10 in using the Advocacy, Incorporated hotline?

11 MR. BOREL: I think they need to know  
12 more about it, but I tell you the one I hear more  
13 about is poll workers, you know, that -- the poll  
14 workers are -- haven't perhaps set up the site as well  
15 to make it as accessible as possible, don't understand  
16 the accessibility features of the voting machines,  
17 haven't had enough training on how to effectively  
18 interact with a voter with a disability and how to  
19 deal with someone who perhaps has a speech impediment,  
20 who doesn't hear, who has very limited use of their  
21 arms and hands. The poll worker issue and poll worker  
22 training is, in my opinion, the top issue for voters  
23 with disabilities.

24 SEN. ZAFFIRINI: And, of course, the  
25 bill doesn't address any of those issues?

1 MR. BOREL: Not that I'm aware of, no.

2 SEN. ZAFFIRINI: Not that I'm aware of  
3 either.

4 MR. BOREL: Yeah.

5 SEN. ZAFFIRINI: You looked at the bill  
6 and you looked at the fiscal note, and I know that you  
7 heard our discussion regarding the cost of  
8 implementing Senate Bill 362. I am one of many  
9 persons I know who do not believe the fiscal note that  
10 indicates that there would be no fiscal impact to the  
11 state. How would you better use that money, the money  
12 that would be used to implement Senate Bill 326, in  
13 terms of working with persons with disabilities and  
14 ensuring their access to vote?

15 MR. BOREL: Good question. I'm really  
16 glad that I followed Coby here because he was talking  
17 about how they had a budget for this kind of stuff,  
18 the HAVA money. And it's still my opinion that the  
19 accessibility, the polling place features, the  
20 accessible technology, voting technology features that  
21 are part of HAVA, we're not done with that project.  
22 There's a lot more out there. Whenever I go out,  
23 there's just, you know -- I mean, we could be doing  
24 this several more years at the same level, I think.

25 You know, I want to encourage people to

1 vote. I want to encourage people with disabilities to  
2 go out and vote. And to me the Vote Texas projects  
3 have done that. That's what I'd like to see happen.

4 SEN. ZAFFIRINI: Thank you very much for  
5 your testimony and for answering my questions. You  
6 certainly are an inspiration.

7 MR. BOREL: So are you, Senator.

8 SEN. DUNCAN: Senator Ogden?

9 SEN. OGDEN: Mr. Borel, thank you for  
10 your testimony. And, Sen. Zaffirini, thank you for  
11 your good and detailed questions. I mean, you raise  
12 some very important issues, but I'd like to clarify  
13 that the type of documentation that can be used in  
14 lieu of a photo ID is very similar to the type of  
15 documentation that somebody -- or is the same as the  
16 type of documentation of an individual who has some  
17 sort of cognitive disability or other kind of  
18 disability that they must produce in order to  
19 receive state services or in order to receive  
20 healthcare, whether you're talking about a Medicaid  
21 card or Medicare card, correspondence from the  
22 State Department of Health and Human Services,  
23 correspondence from the Social Security  
24 Administration, a social security card.

25 So I would think that it -- and I would

1 ask you this: It would be very, very rare based on  
2 the way I read this bill to find an individual who  
3 wouldn't have several of the types of identification  
4 that are acceptable, even if they don't have a  
5 driver's license. Wouldn't you agree?

6 MR. BOREL: Well, what I would say,  
7 Senator, is if you took a population -- a group of  
8 people from the general population and a group of  
9 Texans with disabilities and lined them up on every  
10 one of those types of credentials with the exception  
11 of the Medicaid card, I think the general population  
12 would be more likely to have them.

13 SEN. OGDEN: Well, but you can't make  
14 that exception because the Medicaid card is just as  
15 valid as any other.

16 MR. BOREL: It is.

17 SEN. OGDEN: If fact if you have a  
18 Medicaid card, you will get monthly correspondence  
19 from the state notifying you that you're still  
20 eligible for Medicaid, and that's your two  
21 requirements, you're done.

22 MR. BOREL: Well, that's true, sir. But  
23 again, if you look at the full list of alternative  
24 credentials, that's perhaps two of the alternative  
25 credentials where the person with the disability might

1 have the access edge whereas the others, they do not.

2 SEN. OGDEN: Might have the what?

3 MR. BOREL: An edge in having access to  
4 those things like a Medicaid card.

5 SEN. OGDEN: Well --

6 MR. BOREL: I mean, they'd be less  
7 likely to have it.

8 SEN. OGDEN: You know, maybe, maybe. I  
9 mean, the people of which you speak are going to have  
10 more access to some of those cards than somebody like  
11 me, for example. I know I've got a driver's license,  
12 so it's not a problem, but --

13 MR. BOREL: I was referring to the whole  
14 list.

15 SEN. OGDEN: I guess the point is while  
16 we're going through the discussion here is that it  
17 seems to me like almost every -- if not every single,  
18 almost every single individual which you described who  
19 is receiving some sort of state assistance or needs  
20 medical assistance almost certainly has to have the  
21 type of documentation needed to receive those  
22 circumstances -- that assistance, which will also be  
23 more than adequate to vote, in my opinion.

24 MR. BOREL: Well, Senator, I know you're  
25 aware that to be Medicaid eligible in this state you

1 really are the very poorest of the poor. And if  
2 you're just plain poor and not the very poorest of the  
3 poor, you don't have a Medicaid card. Thank you.

4 SEN. DUNCAN: There are no other members  
5 in the queue. You can be excused. Before you do  
6 that, though, we will introduce Exhibit 36, which is  
7 the photograph that you provided, and that will be in  
8 the record.

9 (Exhibit No. 36 marked and admitted)

10 **TESTIMONY BY GARY BLEDSOE**

11 SEN. DUNCAN: The Chair calls Gary  
12 Bledsoe. Mr. Bledsoe, before you begin, let's -- you  
13 have written testimony as well.

14 MR. BLEDSOE: I do.

15 SEN. DUNCAN: And we will submit that in  
16 the record as Exhibit 37.

17 (Exhibit No. 37 marked and admitted)

18 MR. BLEDSOE: Thank you.

19 SEN. DUNCAN: Yes, sir. If you'll state  
20 your name and who you represent, and you'll have ten  
21 minutes.

22 MR. BLEDSOE: Okay. Thank you,  
23 Mr. Chairman. My name is Gary Bledsoe. I'm President  
24 of the NAACP here in Texas. I want to thank all of  
25 you for staying here so long. Obviously this is a



1 very important matter. I probably can't be held to be  
2 responsible for what I say at this time, but I will  
3 try to be as clear as possible.

4 The NAACP is a 100-year old  
5 organization. We have always been a multiracial  
6 organization, and indeed we've been present here in  
7 Texas since 1915 and have a long history with voting  
8 rights within this state. And indeed we try to  
9 identify issues that are problematic without regard to  
10 any partisan issues, and I'm hoping that the  
11 information that I provide here can provide a good  
12 discourse and understanding of how we see the  
13 legislation that is at issue here.

14 I know some years back when the Wolens  
15 bill was up for consideration, we thought that would  
16 be problematic. His party didn't make a difference,  
17 and we were there to oppose that legislation, and we  
18 feel the same way about the bill here, SB 362.

19 And I took a little bit of a different  
20 tact in how I prepared the written testimony, but  
21 based on a number of things that I've been hearing  
22 today and maybe some of the questions that some of you  
23 have had, I thought maybe what I would do here is  
24 somewhat try to focus on a couple of those issues  
25 because I think they are important.

1                   You know, to begin with, I think that we  
2                   have to look at this matter in terms of what the  
3                   constitutional requirements might be and secondarily  
4                   what the requirements of the Voting Rights Act might  
5                   be. And in that regard, if we can say that there is  
6                   an impact, a noticeable impact on African-Americans or  
7                   Latinos, that we have to look at the question of  
8                   whether or not there might be retrogression or whether  
9                   or not there might have been a way of narrowly -- more  
10                  narrowly tailoring the actual statute that we're  
11                  talking about.

12                 Now, I think that for a number of just  
13                 very clear reasons to me we would have a negative  
14                 impact on people of color. I think -- number one, I  
15                 think you've heard many people say today that indeed  
16                 that there's a lower percentage of individuals who  
17                 have driver's licenses or photo identification cards  
18                 and I think that's a fact.

19                 I think we've also done -- when we did  
20                 one of our racial profiling studies with the  
21                 Department of Public Safety or data, one of the things  
22                 we were able to determine is that the actual car  
23                 ownership data indicated that minorities had less  
24                 access to automobiles and owned fewer automobiles and  
25                 more were without automobiles at all in their home,

1 and so this creates more of a burden in terms of the  
2 ability to travel.

3 I think also one of the other things  
4 that I see in the bill is the -- is the affidavit. So  
5 if you look at the affidavit and the affidavit that  
6 you have to sign when you don't have the proof  
7 according to the bill, that affidavit makes you make a  
8 representation that you are -- that you are eligible  
9 to vote right then and there. And I know the problems  
10 I've had getting people to register to vote who might  
11 have had felony histories or what have you, there's a  
12 little intimidation. And with the nature of the  
13 wording, I think it's very intimidating and  
14 threatening and will make individuals feel challenged  
15 to sign that particular affidavit.

16 I think also there's the issue with  
17 communicating the new requirements of the law so  
18 people can be prepared when they go to the polling  
19 place in order to vote, in order to be able to vote  
20 effectively. And because I think of the nature of how  
21 it's been done with the likelihood of not being able  
22 to reach all voters the way they need to be reached, I  
23 think that when the voters turn out and the ones who  
24 will be rejected on election day I think will show --  
25 it will show clearly there will be a disparate impact

1 on racial and ethnic minorities.

2 And one of the things that I can say  
3 that also I feel will be a major problem is that --  
4 and I went down to Venezuela to be an official  
5 election observer down there, and I saw people in  
6 lines for eight hours, you know. And they have all  
7 these incredible requirements there where you've got  
8 to give your thumb print. You have untrained people  
9 trying to determine if your thumb print is the same  
10 one that's in the computer, you have to show different  
11 forms of identification, and it takes a long time to  
12 get through those lines. And so you have people in  
13 those lines -- they start lining up like 3 or 4 a.m.  
14 in the morning.

15 And I think -- not that this would be  
16 that burdensome, but I think that we already see in  
17 too many minority areas where there's not enough  
18 ballots, there are not enough voting machines at the  
19 specific locations, the lines are already too long,  
20 it's already a major problem. And I think when you  
21 add this kind of requirement there, it's going to make  
22 it a lot longer and make it more difficult for folks  
23 to desire to stay and to be part of the process. So I  
24 think indeed that -- for many reasons even beyond  
25 that, I think we would have a clear discouraging or

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1 discouragement of African-American voters.

2 Now, there are a couple of things I  
3 wanted to mention here. I think that when you look at  
4 the law -- when I looked at the bill analysis, the  
5 bill analysis talked about problems with registration.  
6 It said that because no identification is required  
7 during registration, it makes it possible or likely  
8 that you will have people who can get -- who can get  
9 voter registration cards who may not actually be the  
10 person.

11 And so the first thing that grabbed out  
12 of me was well, if there is a problem -- but I don't  
13 think it's really been shown -- but if there is a  
14 problem, why isn't it addressed at the point where  
15 there is a problem? And if the point of the problem  
16 is at registration, instead of something that will be  
17 discouraging to people who are registering to vote,  
18 then that is where the focus would be, in my mind.

19 The affidavit again is intimidating. I  
20 think I mentioned the long lines.

21 Another thing is when we looked at the  
22 categories of information for the nonphoto ID items  
23 that are provided for in the bill, there are a couple  
24 of things that leap out at me: The general provision  
25 that would allow a catch-all because when you're

1 writing a bill, it's kind of hard to envision and know  
2 all the different circumstances where indeed a  
3 situation where a person might present something that  
4 should be considered proper proof. And I think the  
5 fact that there was kind of a laundry list provision  
6 that's deleted and not allowed to be used, I think  
7 that is problematic.

8               Secondarily, the list of items that are  
9 actually there are not really properly comprehensive,  
10 in my mind, and they really would discriminate against  
11 a number of individuals because of the types of items  
12 that are there. And some of the things that are there  
13 are kind of private, some things that people may not  
14 want to produce or show someone at a polling place.  
15 And so I think that by the nature of the documents  
16 that are listed there, that they're not reasonable in  
17 terms of how they're fashioned.

18               And the bill doesn't state exactly how  
19 it will be executed. It leaves a lot of things up to  
20 be determined later by the Secretary of State. So  
21 exactly how the law will be applied, how it will be  
22 interpreted will be a big problem.

23               One of the things that we've seen around  
24 the state is -- and we've done -- we've had about five  
25 different hearings around the state relating to

1 election irregularities, and we've found just  
2 incredible things all around our state to indicate  
3 there's still a real problem with folks understanding  
4 and appreciating minorities being able to vote.

5 In this last election cycle, we saw a  
6 particular problem with Election Officials. Because  
7 of the different ways Election Officials are selected,  
8 we had a number of people that were rejected and had  
9 real conflicts with individuals who were Election  
10 Officials.

11 And I might say it was really  
12 broad-based kinds of things that we've seen over the  
13 last few years. We've seen hate crimes where white  
14 supporters of a black candidate had their home burned.  
15 We've seen situations where people were purged from  
16 voting lists when they should not have been. We've  
17 seen the improper use of off-duty police officers, the  
18 use of mailboxes to put intimidating communications.  
19 We've seen a lot.

20 **QUESTIONS FROM SENATE FLOOR**

21 SEN. WENTWORTH: Thank you. The Chair  
22 recognizes Sen. Ellis of Harris.

23 SEN. ELLIS: Thank you, Mr. President,  
24 and thank you President Bledsoe for being so patient.  
25 I know you were here earlier today. And you were

1 wrapping up your testimony, you can submit it, of  
2 course. I have some questions I want to ask, but if  
3 you just have some summation that you want to add in  
4 addition to your testimony, I'd like to hear that.

5 MR. BLEDSOE: Sure. Thank you, Senator.  
6 What I was trying to complete was the types of things  
7 that we have found around the state in our inquiries  
8 in terms of both our -- every election we have a group  
9 of lawyers that volunteer and run an 800 line, and we  
10 take calls from around the state. And we also have  
11 had those five hearings, a couple in Houston, Dallas,  
12 Fort Worth, Texarkana out in East Texas, and we found  
13 that people were not allowed to tender -- challenge  
14 ballots according to law. We've seen individuals that  
15 were soldiers in Fort Hood who had their voter  
16 registrations who were wrongfully purged from the  
17 voting rolls. We've seen just a number of problems  
18 that have disenfranchised African-American voters, and  
19 it still is a major, major problem throughout the --  
20 throughout the state but particularly in the urban  
21 areas and East Texas.

22 SEN. ELLIS: Thank you. Mr. Bledsoe,  
23 some people would say that the Voting Rights Act is no  
24 longer needed, that it's a thing of the past  
25 particularly as it relates to Texas. Can you cite



1 some examples or give reasons that would show why we  
2 still need the Voting Rights Act protection in Texas?

3 MR. BLEDSOE: Well, you know, we have  
4 had a number of -- you know, I'll thank Attorney  
5 General Abbott. You know, he assisted the folks in  
6 Prairie View when a situation arose where you had a  
7 number of people who were wrongfully purged from the  
8 rolls who could not vote in the city election, and you  
9 also had I think about a thousand ballots -- I mean  
10 voter registration applications that were just sat on,  
11 that no one -- just sat on, so the folks were not able  
12 to vote in a particular election, but they were found  
13 there in a county office, and they were -- and the  
14 Attorney General had them file them. But, you know,  
15 that was a clear violation of the Voting Rights Act.

16 And we have the situation I mentioned  
17 earlier in Wharton County where an African-American  
18 candidate for Sheriff had a white couple that were  
19 working on the campaign, one was a County  
20 Commissioner, and they received a number of hate crime  
21 calls, and their home burned down as a result of that.

22 You know, we've had problems in Fort  
23 Bend County with there being changes in polling places  
24 much too late and not properly publicized in the  
25 newspaper. We've had problems there in terms of

1 individuals who wanted to file -- challenge ballots,  
2 and they were not allowed to. We've had problems  
3 there where people were sent to the wrong polling  
4 places and they ultimately could not vote.

5 We've had all the problems in Dallas  
6 County where indeed there are too few ballots that  
7 have shown up a number of occasions in Dallas County,  
8 and so the lines get long, people get frustrated,  
9 people leave.

10 We've had people hire off-duty police  
11 officers, and that's in conjunction with making  
12 contact with an African-American newspaper, having  
13 articles in the newspaper talking about if you have an  
14 outstanding warrant, you're going to be arrested. And  
15 so you go and hire all the off-duty police officers  
16 and stand them outside the polling places to  
17 intimidate individuals from voting.

18 So I mean it's just -- there's just a  
19 huge number of things that have occurred and have  
20 occurred in most places around the state.

21 SEN. ELLIS: Mr. Bledsoe, is there a  
22 well-documented history of voter suppression that is  
23 specifically related to race and ethnicity in Texas?  
24 And how would this voter ID law fit into that history?

25 MR. BLEDSOE: Well, there is a long

1 history, and our state still hasn't come to where our  
2 state needs to be. You know, that's one of the issues  
3 before the United States Supreme Court in a case that  
4 the NAACP is involved in, and it's going to be argued  
5 in April of this year relating to the need for the  
6 continued existence of the Voting Rights Act.

7 I think when we look at the history and  
8 the continued problems that we've had in a number of  
9 areas and fronts and we see the problems with language  
10 voters, we see the problem with racial minority  
11 voters, those things, the problems are never -- never  
12 alleviated because we've continued to have voter  
13 intimidation.

14 And when you have voter intimidation --  
15 and the record is really replete. I mean, I don't  
16 think there's any question that when we look at what's  
17 occurred and -- let's take a look at Harris County.  
18 This is kind of an unpopular thing to say, but I know  
19 there's a coalition that's running a group countywide,  
20 and the only ones to lose are really minority  
21 candidates that makes you think -- and I talked to  
22 Dr. Davidson about that. That cries out to me is  
23 there something wrong with that particular election  
24 there when you've got a coalition of people running.  
25 And people like Goodwill Pierre or people like the

1 District Attorney actually lose, they happen to be  
2 people of color, and so that makes you want to look  
3 further at those issues.

4 But we do have the problem all around  
5 the state. It continues to be a problem. We've made  
6 gains. It's not the same state it was in 1960, but  
7 it's not nearly where it needs to be.

8 SEN. ELLIS: That's an interesting  
9 comment, and I might add a bipartisan comment because  
10 in Harris County where there was a Democratic sweep,  
11 for some strange reason the candidates that didn't win  
12 in that sweep were the candidates of color primarily.

13 MR. BLEDSOE: And there were also  
14 problems when there were -- when there was a  
15 Republican sweep with the Republican blacks not  
16 winning as well. So that's been a problem both ways  
17 in Harris County.

18 SEN. ELLIS: How would this voter ID  
19 law, this specific law -- I know you've looked at the  
20 statute -- discriminate against people of color?

21 MR. BLEDSOE: Well, what this specific  
22 law will do is it will clearly reduce the minority  
23 vote, both because of the pressure that will be put on  
24 the polling place that will cause the longer lines,  
25 that will give more discretion to -- it will give a

1 lot more discretion to Election Officials that are  
2 already having problematic relationships with people  
3 of color, and it will -- it has intimidating  
4 provisions that will make individuals take a look at  
5 the law and say "Well, I'm not sure I want to sign  
6 that document." And it will prevent people who were  
7 there in good faith from being able to come up with  
8 the right information to be able to vote because of  
9 the great burdens it will place on them.

10 I know that I got -- I visited with a  
11 former official in the Department of Justice Civil  
12 Rights Division. They indicated like how in Presidio  
13 County it's 3800 square miles in the county and the  
14 high number of language minorities in the county and  
15 the real difficulty in that county in making it to a  
16 location to get a driver's license. So -- or to get a  
17 photo identification. So there will be a real problem  
18 that way. So I think it clearly will cause  
19 retrogression.

20 But secondly, the other point that I  
21 wanted to make was that not just the Voting Rights Act  
22 and the retrogression, it clearly will show a drop in  
23 the vote -- in the African-American vote, but I think  
24 that it could have been a lot more narrowly tailored.  
25 It could have been focused specifically on the problem

1 that's at hand, that's at issue, and it's not focused  
2 on the problem at hand in the kind of narrow way that  
3 I think that it should. So it unnecessarily tramples  
4 upon rights of minorities that it doesn't need to.

5 SEN. ELLIS: I think I saw you in the  
6 room when the testimony was given from the person from  
7 AARP. And despite some of the questions that were  
8 asked from present counsel, I assume that there will  
9 be an attempt to maybe exempt the elderly out of this  
10 bill in this great deliberative body. After being  
11 here 24 hours, there might be an attempt to do that.

12 My question is if the legislature does  
13 decide to exempt certain classes of voters, like maybe  
14 seniors or some others from this in bill, would that  
15 direct -- in your judgment, would that direct an even  
16 greater amount of its potential to disenfranchise  
17 voters of African-American and Hispanic ancestry?

18 MR. BLEDSOE: Well, I will say that -- I  
19 don't know if I'll say it will be greater, but it  
20 won't dilute it because the impact that would be  
21 illegal or unconstitutional will be just the same  
22 because the -- you'll be taking out one group, but  
23 when you look at those who are younger than -- younger  
24 than 65, you have an enormous problem with racial and  
25 ethnic minorities.

1 I think in one sense it makes it worse  
2 in that the other group that might be -- one of the  
3 other groups that might be unnecessarily adversely  
4 impacted will no longer be adversely impacted. So it  
5 will be primarily blacks and browns that will be  
6 negatively impacted by the bill. So I don't think  
7 that that would go far enough. There would still be a  
8 deleterious impact on the African-American community.

9 SEN. ELLIS: Did you see the press  
10 accounts from '05 and '06 of the Attorney General's  
11 highly publicized campaign against voter fraud?

12 MR. BLEDSOE: I haven't actually seen  
13 them. I've discussed some parts of them with  
14 different individuals.

15 SEN. ELLIS: If you can, I just want to  
16 get a sense of based on what you know about that  
17 anti-voter fraud campaign, that the Attorney General  
18 used materials that included images of sickle cell  
19 stamps based on press accounts and photos of  
20 African-Americans to illustrate signs of voter fraud.  
21 And my question is, what does that tell you about the  
22 state's attitude and enforcement of voter fraud? And  
23 did the conduct and targets of those prosecutions fit  
24 into a pattern of voter suppression in Texas?

25 MR. BLEDSOE: Well, I think it's very

1 disappointing that that would be used because  
2 obviously that makes a suggestion. Whether it was  
3 intentional or not, one cannot know, but it's clear  
4 that you send a certain signal when you use things  
5 like that. And something so innocent as a sickle cell  
6 stamp to be used there would be completely  
7 inappropriate, and I don't understand how that could  
8 be there. So obviously that would be offensive and  
9 problematic.

10 And I do know that -- I think the data I  
11 looked at in terms of the prosecutions were 18 out  
12 of 19 or something along those lines were racial and  
13 ethnic minorities, and that is one of the reasons why  
14 we opposed the bill. When Representative Wolens had  
15 put the bill together, you know, we were one of the  
16 groups that vehemently opposed it because what we  
17 feared at that time when he put that bill forth was  
18 that it was going to be disparately used against  
19 racial and ethnic minorities, and indeed I think that  
20 was probably the case.

21 SEN. ELLIS: One last question. You may  
22 have heard some of the testimony from Indiana and  
23 Georgia from the experts of representatives that were  
24 here. So what I want to ask you is you suggest the  
25 photo ID law would suppress the African-American



1 turnout, but some voter ID advocates claim that a  
2 voter ID law does not suppress turnout and even claim  
3 that turnout increased in Indiana and Georgia in '08  
4 and that it was caused by voter ID laws compared to  
5 the 2004 turnout when there was no voter ID law in  
6 place in those states.

7 Obviously turnout can vary a lot between  
8 the election cycles based on a lot of factors like  
9 who is in the race, but my question is, did  
10 African-American turnout in Texas increase in '08  
11 without a voter ID law? And do you think the reason  
12 might be the same as the real reason for reports of  
13 higher turnout in Indiana and Georgia?

14 MR. BLEDSOE: Well, the African-American  
15 turnout did increase greatly this past election in the  
16 State of Texas, and obviously it wasn't due to a voter  
17 ID law, and I think it increased greatly nationally,  
18 including many states that did not have voter ID laws.  
19 So I think it really would be completely inaccurate to  
20 say that the voter ID laws had anything to do with an  
21 increase.

22 I do know that they did cause folks to  
23 be turned away from the polls in Georgia from my  
24 communications with the Georgia State Conference. The  
25 reason why you had the increased turnout was the Obama

1 candidacy joined with an effective Obama campaign that  
2 in many ways would be very hard to duplicate because  
3 it wasn't just the Obama candidacy, but you had a  
4 great deal of finances assisting the folks in getting  
5 out votes in different communities.

6 So there was a real green element to  
7 that turnout as well. So that went well beyond any  
8 voter ID law. And I think that when the proof is in  
9 ultimately there will be absolutely no question that  
10 the voter ID law will have a negative impact on the  
11 African-American vote in Georgia and I would presume  
12 Indiana as well.

13 SEN. ELLIS: Mr. Bledsoe, thank you for  
14 being so patient and being here.

15 To all Members present, thank you. And  
16 with that, good morning. I'm signing off and good  
17 night.

18 MR. BLEDSOE: Thank you, Senator.

19 SEN. DUNCAN: Thank you, Mr. Bledsoe.  
20 The queue is clear. You're excused.

21 MR. BLEDSOE: Okay.

22 SEN. DUNCAN: We appreciate your  
23 presence today.

24 **TESTIMONY BY ERIC NICHOLS**

25 SEN. DUNCAN: The next witness will be

1 Eric Nichols with the Attorney General's Office.  
2 Mr. Nichols, if you'll approach? Mr. Nichols is being  
3 presented as a resource witness. If you'll state your  
4 name and the office that you are with, please?

5 MR. NICHOLS: Thank you, Mr. Chairman.  
6 Eric Nichols, Deputy Attorney General for Criminal  
7 Justice with the Office of Attorney General.

8 SEN. DUNCAN: Mr. Nichols, you have ten  
9 minutes, and then we'll open it up for questions.

10 MR. NICHOLS: Thank you, sir.  
11 Regardless of the hour, I'm pleased to appear before  
12 the Committee of the Whole, and I've had the  
13 opportunity to speak with many of you individually as  
14 well as Senate and House Committees on the topic that  
15 I've been asked to be a resource on tonight, which is  
16 the election code enforcement activity that has  
17 occurred at the Office of the Attorney General.

18 By way of background, I've spent a good  
19 deal of my legal career working in the legal justice  
20 system, previously on the federal side as an Assistant  
21 United States Attorney and now on behalf of the State  
22 of Texas.

23 As part of my duties at the AG's office,  
24 I oversee the agency's Criminal Justice Divisions,  
25 including the two divisions of that office that are

1 principally responsible for matters arising under the  
2 Texas Election Code that come to our attention. Our  
3 Criminal Investigations Division investigates election  
4 code cases that are referred to our office. The  
5 Criminal Prosecutions Division brings criminal  
6 prosecutions and election code cases on behalf of the  
7 state when an investigation reveals facts that warrant  
8 prosecution.

9           Again, I understand from discussion  
10 among the committee members earlier here today that  
11 I'm here to be a resource on the issue of the election  
12 code enforcement that's occurred through our agency,  
13 and so I'm prepared to give you some historical data.  
14 But before I do that, I want to provide three caveats  
15 that I've provided to many of you before, and I  
16 apologize to those of you who have heard these  
17 caveats, but I think they are important to put the  
18 data in context.

19           First, it's important for anyone looking  
20 at data that comes out of our office to keep in mind  
21 that our agency's election code enforcement efforts  
22 are entirely referral driven. What does that mean?  
23 We do not currently have nor have we ever had any  
24 officers, investigators, prosecutors or any kind of  
25 officers, agents or employees watch, supervise or

1 otherwise monitor a polling place, voting station or  
2 voter roster during any election in this state.

3 We, therefore, depend on third parties  
4 to make us aware of alleged election code violations.  
5 Accordingly, if a third party does not for whatever  
6 reason detect a potential violation of the election  
7 code or if they do detect a potential violation of the  
8 election code but choose not to file a complaint or  
9 make a referral to our office, then our office is  
10 obviously unaware and unable to investigate what would  
11 have been the underlying subject matter.

12 Referrals to our office on potential  
13 election code cases come from three primary sources.  
14 As you've heard, the Secretary of State is the state's  
15 chief elections officer. Under the election code, the  
16 Secretary of State takes questions and referrals from  
17 a variety of sources, including members of the public.  
18 The Secretary of State's Office reviews those matters,  
19 and under the statute when they determine that there  
20 is "reasonable cause to suspect that the alleged  
21 criminal conduct occurred," the SOS then refers the  
22 matter to our office for further investigation.

23 There are also provisions in the  
24 election code that allow concerned local registered  
25 voters to file complaints about alleged wrongdoing

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1 directly with our office by filing sworn affidavits.  
2 And then finally the third, another primary referral  
3 source for election code cases, are local elections  
4 officials and local law enforcement.

5           Given our office's role in coordinating  
6 on law enforcement generally with local law  
7 enforcement agencies and officials, including local,  
8 District and County Attorneys, Sheriffs and Police  
9 Departments, we receive direct referrals from these  
10 local officials.

11           The second point for context is this:  
12 The legislature -- this legislature has given the  
13 Attorney General's Office direct authority and  
14 jurisdiction to prosecute election code cases, but our  
15 authority and jurisdiction in this area is not  
16 exclusive. Local prosecutors at the county level also  
17 have jurisdiction to prosecute election code cases,  
18 and they do, in fact, as you've heard in testimony  
19 today, exercise that jurisdiction.

20           We do, in fact, coordinate with local  
21 prosecutors. And as in the case of that Dallas County  
22 case you heard about earlier, we do not generally move  
23 forward on a case if a local prosecutor decides -- or  
24 declines to prosecute.

25           A quick review of available new stories

1 in addition to what you've heard today shows that from  
2 Hidalgo County to Harris County there is local  
3 election code enforcement going on by local  
4 prosecutors. With all this in mind, to get a complete  
5 picture of all of the prosecutions in Texas under the  
6 election code would require you to collect data from  
7 all 254 counties. So I can only give you a piece of  
8 the statewide picture here tonight.

9 The last context point that I always  
10 give, and I apologize again for those of you who have  
11 heard it, is that for obvious reasons of law  
12 enforcement and respecting the rights of those who may  
13 be under active investigation or prosecution, I can  
14 talk publicly in terms of numbers and largely general  
15 fact scenarios rather than talk in a public hearing  
16 about specific investigations or cases.

17 So with all that being said, I'd like to  
18 provide you-all with historical data that dates from  
19 August 2002 to present. In that time period, the  
20 Office of Attorney General has received 192 referrals  
21 of potential election code violations from the three  
22 sources I mentioned previously. There have been some  
23 statements made before the committee about the Office  
24 of the Attorney General engaging in a lengthy  
25 statewide investigation. Those comments are not quite

1 accurate in terms of what our office does in terms of  
2 reacting to referrals. We only act upon referrals  
3 that we receive, and as you would expect having given  
4 the office the authority and jurisdiction to  
5 investigate these matters, our charge is to thoroughly  
6 investigate the matters that come to our attention.

7 Those 192 referrals break down as  
8 follows by source: 82 came from the Secretary of  
9 State, 44 came from voters in the method I described  
10 earlier, and 66 came from local officials and law  
11 enforcement.

12 Furthermore, those 192 referrals break  
13 down by the type of election as follows: 82 involved  
14 Party Primary Elections, 33 involved General  
15 Elections, and 77 involved other Local or Special  
16 Elections. And so only about 15 percent of the  
17 referrals to our office deal with issues arising in  
18 General Elections, and 85 percent arise in either  
19 Party Primary or Local Special Elections.

20 Now, of course, once these  
21 investigations are conducted by our office, a  
22 significant number of these cases are going to be  
23 determined to not rise to the level of an election  
24 code violation either based on the facts or law.  
25 However, these 192 referrals have to date resulted in

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1 30 prosecutions of offenses under the election code by  
2 prosecutors from the Office of Attorney General,  
3 again, often working in conjunction with local  
4 prosecuting attorneys in Texas counties. And in terms  
5 of the cases that have been prosecuted, three of those  
6 cases involved General Elections, the other 27 involve  
7 Party Primary or Special or Local Elections.

8 The 30 cases involved in general, fact  
9 scenarios such as these, unlawful abuse of the mail-in  
10 ballot process, campaign finance violations, unlawful  
11 conduct at the polling place and other obstruction of  
12 the elections process.

13 Finally to give you a general idea of  
14 the kinds of cases that go behind these numbers, I  
15 just want to briefly lay out a couple of fact patterns  
16 for you. The first fact pattern that I've talked  
17 about in the House Elections Committee before resulted  
18 in a five-year sentence by a jury for a defendant who  
19 was involved in a scheme that resulted in two resident  
20 aliens voting improperly in a Local Party Primary  
21 Election. This case arose out of Calhoun County. It  
22 was tried in Jackson County.

23 The second fact pattern concerns persons  
24 who fill out voter registration applications using  
25 names and/or addresses of nonexistent persons. We've

1 had several cases that have involved that fact  
2 scenario.

3 The third fact pattern involves  
4 situations in which a person attempts to impersonate  
5 or does impersonate others in casting a ballot.  
6 There's one case that's been prosecuted that I think  
7 you-all have heard about involving an attempt to vote  
8 a mail-in ballot of a deceased mother.

9 SEN. DUNCAN: I'm sorry. Your time has  
10 expired.

11 Senator Huffman, you're recognized.

12 **QUESTIONS FROM SENATE FLOOR**

13 SEN. HUFFMAN: Thank you, Mr. Chair.

14 Mr. Nichols, did you want to just finish  
15 quickly?

16 MR. NICHOLS: Just real quick.

17 SEN. HUFFMAN: Okay.

18 MR. NICHOLS: I just wanted to finish  
19 that. On the fact pattern is also evident in cases  
20 that are under investigation by our office where there  
21 are allegations that votes were cast at the polling  
22 place by persons other than the registered voter.

23 And with that, there were some  
24 additional items that I want to speak about, but I'll  
25 be happy to answer questions.

1                   SEN. HUFFMAN: All right. Basically I  
2 just want to summarize that it is -- the way that the  
3 Attorney General starts investigating the case is  
4 always through a referral from the local officials.  
5 Is that correct?

6                   MR. NICHOLS: Yes, Senator. It can come  
7 from the Secretary of State, from voters through the  
8 election code or from local Election Officials or  
9 other local law enforcement.

10                  SEN. HUFFMAN: Has the AG taken on the  
11 responsibility of going out into the communities and  
12 sitting up at polling places or going to the  
13 registrar's office in any way, shape or form?

14                  MR. NICHOLS: No, Senator. That's not  
15 our charge.

16                  SEN. HUFFMAN: All right. In looking at  
17 the numbers that you've given us and that you've  
18 summarized, it's clear that, in fact, there are a lot  
19 of difficulties in prosecuting these cases. Is that  
20 correct?

21                  MR. NICHOLS: It is. It depends on the  
22 kind of violation involved, but all cases of this type  
23 are difficult to both investigate and prosecute.

24                  SEN. HUFFMAN: And is that just the  
25 nature of the cases and the fact that, of course, they

1 have to be proved like any other criminal case, and  
2 that is, you have to -- the level of proof is proof  
3 beyond a reasonable doubt. Is that correct?

4 MR. NICHOLS: Absolutely. As you know,  
5 there are certain screenings that go on through the  
6 investigation of a case, both internally and of the  
7 law enforcement agency. All the cases that we  
8 prosecute are eventually -- if there is a decision  
9 made to proceed to a grand jury, to present it to a  
10 grand jury which makes the decision as to whether  
11 charges will issue. And then, of course, you've got  
12 ultimately a jury trial where those allegations don't  
13 mean anything unless a jury of that person's peers  
14 enters a conviction.

15 SEN. HUFFMAN: Would the bill that's  
16 being proposed that would establish or attempt to  
17 establish voter identity assist in the prosecution of  
18 at least some of these cases to help to establish the  
19 identity element that is often missing or just  
20 impossible to prove under current law?

21 MR. NICHOLS: Well, Senator, I don't  
22 understand that I'm here to testify about the bill one  
23 way or the other.

24 What I would say just generally speaking  
25 any effort that would assist in detecting persons who

1 attempt to vote illegally could conceivably give rise  
2 to evidence that would be useful in a criminal case.

3 SEN. HUFFMAN: All right. I want to ask  
4 you about a document that we have and ask you if it is  
5 a work product of the AG's Office that we can enter  
6 into the record.

7 Mr. Chair, may I have permission to  
8 approach the witness? Mr. Chair, may I approach the  
9 witness briefly to show him --

10 SEN. WHITMIRE: Sen. Duncan, she wants  
11 to approach the witness.

12 SEN. HUFFMAN: I can? Okay. May I  
13 approach the witness briefly to show him a document?

14 SEN. DUNCAN: Yes.

15 SEN. HUFFMAN: Thank you, sir.

16 (Discussion off the record)

17 SEN. HUFFMAN: All right. If I may  
18 proceed? What I'd like you to clarify, there's been a  
19 lot of testimony, I guess, in the last 20 hours or so  
20 about money that was spent by the AG's Office in  
21 investigation of voter fraud cases. I want to make  
22 sure that the record is clear what the actual facts  
23 are. So if we could go through those, or if you have  
24 a summary of that and you want to give that to me for  
25 the record, we could do that and go through that

1 quickly.

2 MR. NICHOLS: I can.

3 SEN. HUFFMAN: Please do that.

4 MR. NICHOLS: It has -- it has been  
5 reported initially in the media and has been repeated  
6 by certain folks that the AG's Office spent  
7 1.4 million on cases that the AG's Office has  
8 prosecuted under the election code. This information  
9 that apparently has been provided to members of this  
10 body is inaccurate. The confusion stems, I think,  
11 from the fact that there were references to the grant  
12 funding when the Special Investigations Unit of the  
13 Criminal Investigations Division was created. And  
14 people reached the conclusion that because it was  
15 funded through grant funding that all that money was  
16 used to prosecute and investigate election code cases,  
17 which is inaccurate.

18 As a matter of fact, if you go to the  
19 grant package that sought that funding, the grant  
20 package made it clear that that funding would be used  
21 to prosecute not just election code cases, but cases  
22 of public corruption, fugitive apprehension, child  
23 protection such as on-line solicitation and child  
24 pornography cases, as well as a host of other matters.

25 And so, in fact, if you crunch the

1 numbers and trace those grant funds, you'll find at  
2 the end of the day that with respect to the OAG's  
3 election code prosecutions, \$93,579 of that grant  
4 funding can be traced to those prosecutions. And so  
5 it's just an example, in my mind, of how everyone,  
6 including members of this body through no fault of  
7 their own, need to be careful about information that's  
8 being provided to them about the OAG's enforcement  
9 efforts because sometimes that information can be less  
10 than accurate.

11 SEN. HUFFMAN: All right. Thank you,  
12 sir. One last question. There's also been some  
13 testimony about a depiction of a sickle cell anemia  
14 stamp that was shown I believe on a PowerPoint  
15 presentation that was presented perhaps from someone  
16 from the AG's Office at some point somewhere. Are you  
17 familiar with why a sickle cell anemia stamp was used  
18 in a presentation from the AG's Office? And explain  
19 that, please.

20 MR. NICHOLS: Yes, I am. That slide  
21 actually took evidence from an actual case. It was  
22 the Willie Ray case that you-all heard a little bit  
23 about today. And that stamp that was actual evidence  
24 from a criminal case was included on a slide that had  
25 as one of the bullet points the words "unique stamp."

1           The point of that PowerPoint that was  
2 produced was to try to educate law enforcement  
3 officers about ways they could investigate potential  
4 cases of election code violations. The point of  
5 including that evidence was to show that in a  
6 particular case, in the Willie Ray case, a key facet  
7 of that case was the use of the unique stamp. It  
8 didn't matter if it was a sickle cell stamp, a Lou  
9 Gehrig stamp, an Abraham Lincoln stamp, it wouldn't  
10 matter.

11           The point is that the fact that that  
12 stamp was used on a number of mail-in ballots allowed  
13 the investigators to go trace those ballots back to a  
14 single source, which of course is the charge that  
15 Willie Ray was ultimately charged with.

16           So first of all, I wasn't at the office  
17 at the time. In hindsight I can see how somebody  
18 would look at a PowerPoint like that, and frankly  
19 given the sensitivities involved, somebody might be  
20 offended by that, but it is important to understand  
21 exactly why that PowerPoint was put together.

22           SEN. HUFFMAN: All right. Thank you.  
23 Thank you very much, Mr. Nichols.

24           SEN. DUNCAN: Thank you, Senator.

25           Sen. Hegar?